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BRENTWOOD BOROUGH
RENTAL PROPERTY BOARD OF APPEAL

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IN RE:)
)
CASE NO. 2015-01)
PINE TREE GARDEN)
APARTMENTS)
CASE NO. 2015-02)
BRENTSHIRE GARDEN)
APARTMENTS)

- - - - -

Brentwood Municipal
Building
3624 Brownsville Road
Pittsburgh, PA 15227
Tuesday, April 21, 2015
7:14 p.m.

- - - - -

BEFORE: Stephanie Fox, Chair
Adam Zeppuhar, Board Member
Denise Monk, Board Member
Jennifer George, Board Member
Jennifer Lee, Board Member

- - - - -

ORIGINAL

TRANSCRIPT OF PROCEEDINGS

- - - - -

Reported by:

Lina G. Hershberger
Professional Court
Reporter

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COUNSEL PRESENT:

For the Rental Property Board of Appeal:

David J. Montgomery, Esq.
The Montgomery Law Firm, LLC
100 Ross Street, Suite 510
Pittsburgh, PA 15219

For the Borough of Brentwood:

Brian P. Maloney, Esq.
Cohen & Grigsby, P.C.
EQT Tower
625 Liberty Avenue
Pittsburgh, PA 15222

For Forward Brentwood, LLC:

John P. Donovan, Esq.
John P. Donovan & Associates, LLC
434 Allegheny River Boulevard, Suite 200
Oakmont, PA 15139

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ALSO PRESENT: George Zboyovski, Borough Council
Ralph Costa, Building Code Official
Eric Peccon, Assistant Borough
Manager

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<u>EXHIBITS:</u>	<u>MARKED</u>	<u>MOVED</u>
PINE TREE NO. 1	20	21
PINE TREE NO. 2	20	21
PINE TREE NO. 3	43	--

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EXHIBITS:

MARKED

MOVED

PINE TREE NO. 4	44	--
PINE TREE NO. 5	51	--
PINE TREE NO. 6	96	--

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MS. FOX: I would like to call to order the April 21, 2015, meeting of the Brentwood Borough Rental Property Board of Appeal. Tonight we will hear testimony pertaining to an appeal for Forward Brentwood Properties, LCC, of the revocation of the rental licenses at two apartment complexes.

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Please rise for the Pledge of Allegiance.

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(At this point, the Pledge of Allegiance was recited.)

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MS. FOX: Will Mr. Zeppuhar please call the roll.

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MR. ZEPPUHAR: Yes, ma'am. For the record, unfortunately Mayor Troy was unable to make it tonight. He wishes he could be here. So we're going to proceed without him. Mrs. Fox?

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MS. FOX: Here.

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MR. ZEPPUHAR: I am here.

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Mrs. George?

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MS. GEORGE: Here.

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MR. ZEPPUHAR: Mrs. Lee?

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MS. LEE: Ms. Lee. I am here.

MR. ZEPPUHAR: Ms. Monk?

MS. MONK: Here.

MS. FOX: At this time would all individuals wishing to give testimony please rise and be sworn in by the court reporter. This is anyone that is going to come up to the stand after, during the hearing, to speak.

(At this point, all those testifying were collectively sworn.)

MS. FOX: Tonight marks the initial meeting of the Rental Property Board of Appeal. This body was established in 2013 as part of the Borough's entirely overhauled rental property ordinance. The Board has original jurisdiction over appeals of municipal action performed in accordance with this ordinance. To familiarize those in attendance with the nature of these proceedings, Rental Board solicitor, Dave Montgomery, will now briefly speak on the responsibilities of this body and the purpose of tonight's meeting.

MR. MONTGOMERY: Thank you, Ms. Fox. My name is David Montgomery, and I have

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the parties to this hearing. Thank you.

MS. FOX: There are two items on tonight's agenda. Case No. 2015-01 pertains to an appeal of the revocation of all rental licenses associated with the property at Parcel No. 138-S-120, also known as the Pine Tree Gardens Apartments. Case No. 2015-02 pertains to an appeal of all rental licenses associated with the property at 3045 Pyramid Avenue, also known as Brentshire Gardens Apartments. Forward Brentwood Properties, LLC, is the Appellant in both cases.

Following my introduction and staff report, I will ask the Appellant to take the floor so we can begin proceedings. At the conclusion of those proceedings, we will call for public commentary. At that time I will ask any individual who wishes to speak in favor of the revocation of the rental licenses to take the floor. Subsequently I will ask any individual who wishes to speak in opposition to take the floor.

As a courtesy please limit your comments to three minutes. I also ask members of the public to refrain from making comments while another person is addressing the Board. I thank

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you in advance for your cooperation.

we will now hear the staff report from building inspector Ralph Costa.

MR. COSTA: Thank you, Chairwoman Fox. Appellants Forward Brentwood Properties is challenging my March 6, 2015, revocation of all rental licenses at the Pine Tree Gardens and Brentshire Gardens apartment complexes. By ordinance Brentwood Borough requires that all rental units must undergo an inspection by the Department of Code Enforcement at least once per five-year period.

On September 10, 2014, I completed an inspection of one-quarter of the apartments at the Pine Tree Gardens complex. Under Code section 163-7(D), the property owner must abate all noted violations and schedule a follow-up inspection within 120 days of the date of the initial inspection.

At a January 29, 2015, reinspection of these units, it was discovered that a number of the violations listed on the report were not addressed. Additionally, Forward Management failed to pay the required rental registration

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fees by the March 1, 2015, deadline as required under Code Section 163-4(C).

MS. FOX: Thanks, Mr. Costa. We will now ask Forward Management to take the floor to give its presentation.

MR. DONOVAN: I would like to thank all these happy people for coming. My name is John Donovan, and I represent the property owner. The property owner is Forward Brentwood, LLC; and the property manager is Forward Management, LLC.

Now, is this just the first case that we're talking about, just Pine Tree Gardens, or is that everything pertaining to both cases? There's Pine Tree Gardens and there's also Brentshire.

MS. FOX: We're going to do one at a time, so if you want --

MR. DONOVAN: Great.
Mr. Montgomery, you represent the Rental Board, and then this gentleman over here, his name is Brian --

MR. MALONEY: Maloney.

MR. DONOVAN: And you represent?

MR. MALONEY: The Borough.

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submitted. If it hasn't been submitted, our apologies, and we'll make sure it's paid. But certainly coming in here today we had no idea that the non-payment of the fee was an issue for tonight's purposes.

Getting to the second part, which is the condition of the properties, on September 10 of 2014, Brentwood issues a Rental Unit Health & Safety Inspection. I should have enough copies of that for everyone. My client paid almost \$19,000. The two parcels, Pine Tree Gardens is 204 units, Brentshire is 163, at \$50 per unit for the application, plus another \$10 for tenant registration. They paid \$18,600.

To me, in my opinion, my client wasn't given due process because for a 204-unit complex, this inspection doesn't specify specific units, yet the final inspection, which occurred I believe on March 6, lists each unit, and the units are primarily on Victoria and Pearl streets. Every unit is listed specifically, and every alleged violation is listed specifically.

There is not enough guidance in this unit for a 204-unit parcel for which we have paid

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\$60 a unit times however many units were occupied. Myself and my client, Jackie Karkowski, K-A-R-K-O-W-S-K-I, she works for the management company, had a meeting with Mr. Costa and Eric Peccon, P-E-C-C-O-N. We had a meeting on September 30 of 2014. We requested some clarification on some of the inspection issues, and we also requested a time frame to do the renovations and/or repairs.

As a result of that meeting, on October 6 of 2014, Mr. Costa issued a letter to me, and there were three main areas that were addressed in the letter and then a time frame.

So the first issue is backflow preventer must be installed on the water line, but Mr. Costa is unclear what kind of backflow preventer has to be installed. The end of the first paragraph says, Pennsylvania American water may require a commercial-grade backflow preventer to be installed at each meter. Your client should contact PAW to ensure that the installed equipment meets company requirements.

So, in my view, is the Borough doing the inspection for PA American Water, but not

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telling us exactly what kind of equipment needs to be installed?

The second item is HVAC technician must service furnace and verify condition of heat exchanger. Now, like I said before, there are 204 units and there are many other units that are owned by this landlord. They have in-house staff that services all of their boilers and HVAC units.

In the letter from Mr. Costa he states, "it is department policy to ask for a report on the condition of the heating exchanger to be prepared by a professional HVAC technician," and he was also requiring that the units be stickered by the tech. I did research, HVAC techs are not licensed. Anybody can hold themselves out as an HVAC technician.

Also, under the Uniform Construction Code I think it's unlawful for Brentwood to charge a rental inspection fee to have in-house do part of the inspection and then require the landlord to pay a third party to do the part of the inspection that the Borough feels it's unqualified to do. That's not permitted under the Uniform Construction Code.

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MR. MONTGOMERY: Are you moving
these into evidence?

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MR. DONOVAN: I am.

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MR. MONTGOMERY: Any objections?

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MR. MALONEY: No.

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(Pine Tree Exhibit Nos. 1 and 2
moved into evidence.)

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MR. MONTGOMERY: Before the public
speaks, it's appropriate to give the municipality
a chance to respond to this and ask any questions
of Mr. Donovan about what he's testified to and
his assertions. That would be Mr. Maloney for the
Borough.

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MR. MALONEY: Yes. I don't have
any questions for Mr. Donovan, but I'm happy to
make a general rebuttal.

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MS. FOX: Please do.

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MR. MALONEY: My name is Brian
Maloney. I am the solicitor for Brentwood
Borough.

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As an initial matter, I'll just note
that Mr. Donovan admitted essentially that they
have not paid their fees or filed the paperwork to
properly receive rental licenses for 2015.

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MR. MALONEY: I've driven past.

MR. DONOVAN: Have you ever been
in any of the units?

MR. MALONEY: I have not
personally been.

MR. DONOVAN: Then how can you
testify as to their condition?

MR. MALONEY: Fair enough.
Mr. Peccon and others have testified to their
condition as well.

MR. DONOVAN: That would be
hearsay, though; wouldn't it?

MS. FOX: Does any member of the
Board wish to make any additional commentary on
this request? Any questions for either counsel,
either parties?

(No response.)

MR. DONOVAN: Can I ask to see a
copy of the letter that Mr. Peccon referred to?
He said a letter was sent out I think January 1.

MR. PECCON: January 2.

MR. DONOVAN: Do you have a copy
of that?

MR. PECCON: We'll have to print

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you out a copy of that.

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MR. DONOVAN: If we get a bill, we pay it. So if he's testifying that he sent a bill, I would like to see it.

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MR. MONTGOMERY: He's going to get you a copy.

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MR. DONOVAN: Wouldn't it be fair to say that since the municipality knows that there's 204 units, that they would send a bill out for 204 times \$50?

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MS. FOX: I have a commentary to make. Mr. Donovan, I'm just a little bit confused. You stated that when you get a bill you pay it.

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MR. DONOVAN: When my client gets a bill, they pay it.

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MS. FOX: In fact, we have sent out the same bills in prior years, and it took until June of last year to collect the fees from 2013 and 2014.

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MR. DONOVAN: Was that bill for 2013 or was it for just 2014?

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MS. FOX: 2013 and 2014. Can you confirm that?

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MR. COSTA: 2013 and 2014. Again, the inspection fees are once every five years. We're looking at the registration fee which is every year.

MR. PECCON: Comment on the letter here, for the record. This is the notification that is mailed out to each landlord in Brentwood Borough. And this one to the address of record for the property owner on it, 440 Fifth Avenue, suite 63, Pittsburgh 15232.

MR. DONOVAN: Do you have a copy of the rental revocation?

MR. PECCON: I do.

MR. DONOVAN: Can I see that?

MR. PECCON: These are two separate notifications. These are sample notices that I am giving Mr. Donovan here. They were issued in conjunction with each individual unit, and they are separate notices. The one for Brentshire only mentions the revocation due to the failure to pay the fees. For Pine Tree it mentions both the fees and the outstanding Code violations.

MR. DONOVAN: But there's no date

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on this letter. This letter you handed me has no date.

MR. PECCON: Right. Those are the original -- those are the original reminder letters. Again, there's no requirement by Code to send those out, but we do mail them out so the landlords don't forget about this regulation.

MR. MONTGOMERY: When were they sent out, sir?

MR. PECCON: That would be January 2. We send these out en masse to all the landlords. It's the same notification they would have that anyone else would have.

MS. FOX: Have you ever followed up with an e-mail to Jackie or anything regarding the fees due?

MR. PECCON: With the fees, our most recent correspondence, the e-mail to which Mr. Donovan referred, that was after we had discussed how we were going to proceed with this matter. Our main topic of conversation in that e-mail were that they did not follow through with the 120-day time frame for the first quadrant of the complex. I do not recall addressing the fees.

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I can't give a 100 percent answer on that, but the main focus was the violations.

MS. FOX: Mr. Costa, do you have any comments with regard to the time frame given to the violations? I'm just finding this 17 days or 19 days to fix it, that's not following the time frame that I followed.

MR. COSTA: Well, as our attorney said, primarily it's not paying the fees at this point. You know, we were willing to work with them to a degree on the inspections.

MR. DONOVAN: This is the first I have been told about non-payment of the fee, which I believe is you're saying \$10 per unit; correct?

MR. COSTA: Correct.

MR. DONOVAN: But I met with you in september, that was never brought up. There's multiple e-mails to my client, and that's never been brought up. The letter, this March 6, just says if the rental registration information is not received within 30 days, a citation will be filed for illegal operation of the rental unit, and I don't think you waited the 30 days to file that.

MR. PECCON: There have been no

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citations filed in 2015.

MR. DONOVAN: But you have moved to revoke the rental license.

MR. PECCON: Right. That's a notification of the revocation. That's a separate matter than a citation. We have not filed any at the magistrate. That notification states that penalties have been assessed for operation without a license, but it does not say citations have been issued, and indeed they have not been filed yet at the magistrate's.

MR. DONOVAN: So as a practical matter, assuming that we haven't paid \$10 a unit, we haven't gotten a bill for \$2,040, because it's 204 units, if tomorrow we bring a check for \$2,040, then we're left in Common Pleas with the notice issues. I find it hard to believe that a judge who is devoting their lives to justice and interpreting statutes of law is going to find in Brentwood's favor, that you have initially given 120 days to repair, renovate up to Brentwood's Code and then pull that out from under them and give them 17 days to repair and renovate 160 remaining units.

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you is not anything different than we ask of anybody else. We choose to use a third-party agent on electrical. That's our option. We do that with any inspection, commercial, residential. We specifically use Steel City Inspection. I think Jackie does use that particular firm.

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As far as carbon monoxide, we've tried to work with you guys. You guys said you wanted to purchase the machine, use it. We were good with that. It gave a reading, stickered the furnaces, signed off and take responsibility for those inspections. We were good with that.

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MR. DONOVAN: Right. We have done that. We have purchased that unit. It's a little bit late in the year to be testing the furnaces for CO2. And I respectfully have to disagree with the fact that you're asserting that the Borough can make a landlord outsource the inspection of the electrical inspection when you're licensed by the state to do electrical inspections. Why make the landlord pay \$50 a unit when you're licensed to do it yourself?

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For some units they have to pay a third party, but for other units you're going to tell

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them what the errors are. That's the problem that my client has, it's the scope.

MR. PECCON: I believe that if we're listing errors here, those are ones -- I think this is more of a terminology, a semantical issue. When Ralph is saying that we want a third-party inspector to look at it, he's looking at the box. He's stating that he sees issues in the box, so he is not willing to pass it in the condition that it's in. If a third-party inspector comes in and evaluates it differently and assumes the liability, that's perfectly fine. They are seeing something different, and they are also signing off on it.

MR. DONOVAN: Where does it say that in your paperwork?

MR. PECCON: On these -- I'm not sure what you're looking at. On the most recent inspection report that was sent out, for example, we were talking 1 to 4 Pearl Drive, that is Code section 6043 in the International Property Maintenance Code for electrical. Again, it does not specifically say you must get a third party to inspect the panel. It's stating that improper

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grounding, also open connections are defects. However, though, it's procedure in Pennsylvania that once you have an electrician come out and do work, the box should be stickered once it's touched. Is that correct, Ralph?

MR. COSTA: Yes. The electrician, when they're done with the work, they are supposed to notify an electrical inspector to approve the box.

MR. DONOVAN: I agree. If you're going to do work, then you have to get it inspected, but that's not what this rental application is. This rental application is for existing electrical systems.

And it seems to me like you and Mr. Peccon are disagreeing with each other. On one hand you're saying we suggest to people that they get Steel City, but on the other hand, Mr. Peccon is saying you don't have to if you don't want.

MR. PECCON: You don't have to use Steel City. We have recommended them because they have done work with the Borough. Again, you are entitled to select anyone. You were referring to

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a fee schedule in all these sorts of things. We don't contract with anyone specifically. You are able to use anyone who is licensed in the State of Pennsylvania as an electrical inspector.

But when Ralph is failing a box, when he is stating that he wants an electrical inspector to see it, I think he's just not making that clear. He's saying that he's failing it. He is not willing to pass it as a certified electrical inspector. He is saying that he sees a defect in the box at that point.

If you notice, not every box on here has been failed. Some of them he took a look at and was able to pass because he did not cite any issues.

MR. DONOVAN: well, I think you just said yourself that Mr. Costa is not being clear. That's our criticism of this entire process, that you haven't been clear. There are only a couple of minor electrical issues on this final report, yet in the letter from Mr. Costa, the date escapes me at the moment, it says that you must hire a third-party electrical inspector to inspect the electrical systems.

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MR. PECCON: Correct me if I am wrong, we had -- your client had some electrical work done in the interim. I believe that they had -- they were doing some work on the service entry lines. They had Duquesne Light doing some work there. Because of that, some of the boxes that were out of compliance actually were addressed. Is that not correct, that was going on at that time frame?

MR. COSTA: Yes, it is.

MR. PECCON: So actually some of the issues were addressed because Duquesne Light had issues with their service drop, and your client had to make some repairs. That's on their end they also require an inspection.

Again, there will be some -- we certainly don't say zero repairs have been made since the first inspection. Of course, there were some items, and because of those repairs to the electrical services, not every unit that originally failed still does because they performed a total rehabilitation of those.

MR. DONOVAN: If we go back to your initial inspection dated September of 2014,

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you don't list specific properties. That's the problem that we have is that for a 204 unit -- I'm sorry if I'm doing overkill, Ms. George, but this is important. And I think it's unconstitutional for Brentwood to say that we're going to charge you \$50 to do an inspection, and then we're going to make you pay somebody else to do it too. I don't think that's constitutional.

I think if you want inspections done, you have to be specific with what units, whether it's a landlord with 1 unit or a landlord with 204 units.

MS. FOX: I have another question. I would like to thank you for admitting originally that the Pine Tree Gardens has true safety issues. I can testify firsthand from being there that it does.

MR. DONOVAN: Some of these issues definitely need to be addressed for sure, but not everything that's in this shotgun approach from September.

MS. FOX: I have a question. Pest elimination, all structures are to be kept free from insect and rodent infestation. All

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structures in which insects or rodents are found shall be promptly exterminated by an approved (sic). Due to the presence of unsanitary units, an exterminator must be called to the site. Documentation must be provided that each building has been assessed. Has this been completed?

MS. KARKOWSKI: That was in regards to a hoarder that we had. That was an apartment we inspected with Ralph and Eric. That tenant turned out to be a hoarder. Ralph saw evidence of cockroaches. That unit was cleaned up. That unit was inspected.

But I think we go back to the clarity of the report because it was an on-site where he, I, Eric, the maintenance staff were there, and that was the only property that had the issue. But yet in the report it makes it sound like I have 204 units that need to be exterminated.

MS. FOX: So you have never had any other complaint from any other resident regarding a rodent?

MS. KARKOWSKI: No. Not at Pine Tree Gardens.

MR. DONOVAN: With the issue

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whether we have never had a complaint or we have never addressed a complaint, you're going to have tenant complaints when you have 204 units.

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MS. FOX: You have never had a recent complaint from a tenant stating that there was a rodent, pest, insect, anything that shouldn't be there, in their building?

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MS. KARKOWSKI: I don't handle all of the worker requests. I can go and look now, if you would like, to see what unit was the recent request and find out when and if the exterminator was recently dispatched. We work with a man named Blaine with Ehrlich. He comes to a variety of our apartments as necessary.

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MR. MONTGOMERY: Mr. Donovan, have your witness give her full name and title with the owner.

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MS. KARKOWSKI: My name is Jackie Karkowski. I work for Forward Management, the property management company of Pine Tree Gardens. I handle what's called special projects.

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MS. FOX: Also, just because I want to clarify, how long has Forward Management owned these properties?

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MS. KARKOWSKI: I would have to look that up. I have only been with the company a little over two years.

MS. FOX: It just seems that would be a substantial amount of time to rectify these issues.

MR. DONOVAN: Well, to the best of my knowledge, occupancy permits were issued when my client bought the properties. And I'm not going to say with certainty, but it's probably been six or seven years ago. Don't hold me to it, but occupancy permits were issued, so presumably inspections were done at that time.

MS. GEORGE: Excuse me. I do have a question. She said only one property had issues and needed exterminated, but if you go through here, you're seeing 9 through 12 needed exterminated; 13 through 16, the basements; 21 through 24; 29 through 32. And I could keep going, so there was a lot more than one area with vermin and rodents.

MR. MONTGOMERY: Pardon me. Which document are you referring to just so we have a nice record?

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MS. GEORGE: The violations noted as of 2/28/15.

MR. MONTGOMERY: 2/28/15. Is that part of the record for tonight?

MR. DONOVAN: No. Well, I believe the initial question was have you received any tenant complaints.

MS. GEORGE: Okay.

MR. MALONEY: I guess, just to interject here to be clear, Eric, do you have a copy of the inspection report that Ms. George is referring to?

MR. PECCON: Yes, correct. That was included in the packet that went to this Board. That was also the report that was mailed to Forward Management after we did these most recent rounds of inspections.

MR. MALONEY: Do you have a copy of that report that you can give me right now?

MR. MONTGOMERY: I think we should enter that into the record.

MR. DONOVAN: There's been testimony about 2/28/15, but there's no date on the document that I have.

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MR. MONTGOMERY: Why don't we have Mr. Maloney lay a foundation for this, when it was issued, and who issued it.

MR. MALONEY: Just so that we don't have to send Eric off again, I guess I'll give this to Eric. If you could look that over and let me know.

MR. PECCON: Yes, that's correct. This is after we did our inspections on each unit. This is after the initial conversations that we had regarding splitting the properties into quadrants, giving them 120 days for each. After they failed to follow through with that 120-day time frame, we returned and look at each unit, and this report covers each unit at Pine Tree.

MR. MALONEY: So this is an inspection report that you prepared?

MR. PECCON: That's correct.

MR. MALONEY: What date did you prepare it?

MR. PECCON: The violations occurred on -- the inspection occurred on 2/28. This would have been prepared I believe that was a Friday, so this was the next Monday, the 2nd.

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MR. MALONEY: Great. So we would like to enter that into evidence, and I assume, Ms. George, it's okay if I use that copy to give that to Mr. Donovan?

MS. GEORGE: Absolutely.

MR. MONTGOMERY: Why don't we call this Pine Tree 3.

(Pine Tree Exhibit No. 3 was marked for identification.)

MR. MONTGOMERY: And, Eric, do you have any other documents which you referred to tonight that can be entered into the record?

MR. PECCON: Did we enter into the record, Mr. Maloney, the March 6 notices that we mailed out? Have we entered those into the record?

MR. MALONEY: We have not entered those into the record. The only things that have been entered are the exhibits by Mr. Donovan.

MR. PECCON: Given that we have discussed those, would you suggest that we enter those into the record?

MR. MALONEY: If you have a copy of that, we can do that.

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MR. PECCON: I'm going to print out -- these are the sample copies. Again, one was issued for each individual unit. We will enter into the record the March 6 revocation notices, a sample copy. They are different notices for Pine Tree and Brentshire complexes.

MR. MONTGOMERY: We'll call those Pine Tree 4.

(Pine Tree Exhibit No. 4 was marked for identification.)

MR. MONTGOMERY: Are there any additional documents? We have four exhibits.

MR. MALONEY: I think those are all of the inspections that were performed, so I think that would be all.

MS. LEE: I have a quick question. The 2/28 violations aren't actually in question for tonight; correct? Because they have 120 days from the date of this inspection; is that correct?

MR. MALONEY: If I could be clear, as an initial matter, the issue is that the fees and paperwork had not been filed, so the inspections, from the Borough's point of view, are a secondary matter. It's kind of icing on the

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2 cake, if you will.

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4 So before the Board tonight I think the
5 primary question is whether the fees and paperwork
6 have been paid and filed. We're kind of talking
7 about the inspections, but it's not necessary for
8 the Board to make a decision on that.

9 MS. LEE: Thank you.

10 MS. FOX: Any further questions
11 from the Board?

12 MS. LEE: So without filing the
13 fines on time, is there any kind of fee associated
14 with that that would also be subject to now that's
15 on top, like a failure to file fee?

16 MS. FOX: Can you answer Ms. Lee's
17 question?

18 MS. LEE: So if the fees are
19 what's in question tonight, the violation, they
20 didn't pay the fees and didn't file the paperwork?

21 MR. MALONEY: That's correct.

22 MS. LEE: Are there fines on top
23 of that because it wasn't filed in a timely
24 manner? Like, what's the total quantity of money?

25 MR. PECCON: On that end, we do
not assess a late penalty on the \$10 fee. We do

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MR. MALONEY: The inspection fees are related to the inspections because more than two inspections have been done at this point, so whenever additional inspections happen --

MR. DONOVAN: That's not true.

MR. MALONEY: Just to continue. If more than two inspections have been performed, then additional inspections require an additional fee.

MS. FOX: So the inspection fee is not in question tonight?

MR. MALONEY: The inspection will be done at a later date, and those fees are not at issue tonight.

MR. DONOVAN: If I may, there was only one inspection done of all 170 units, and that was February 28. In September several units were inspected.

MS. LEE: Those aren't in question. He just said the inspection fee wasn't in question. It was the \$10-per-unit fee.

MR. MALONEY: We're not seeking additional inspection fees this evening.

MR. DONOVAN: Not tonight?

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MR. MALONEY: Correct.

MR. DONOVAN: I have a question for Mr. Peccon. He made the comment that, I don't want to put words in your mouth, you, the Borough, changed its mind about the 120 days to get into compliance for the 40 units.

MR. PECCON: Not changed its mind. You have referred to a letter that stated -- you have the date. I do not have the letter in front of me. Do you have the date that that was mailed out?

MR. DONOVAN: It wasn't mailed, it was e-mailed.

MR. PECCON: Okay. Do you have the date on that letter?

MR. DONOVAN: February 11.

MR. PECCON: No. The original one, the one from after our September meeting.

MR. DONOVAN: That's in evidence. I'm talking about your letter initially. I believe it was October 6, Mr. Costa sent a letter giving my client 120 days to do the first one-fourth of the units at Pine Tree Gardens.

MR. PECCON: Correct. After the

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120 days passed, we did not have each unit in compliance as was required per that agreement.

MR. DONOVAN: Well, so you gave them 120 days, and where does it say if there's not 100 percent compliance --

MR. PECCON: In the ordinance. What the ordinance actually states is that no inspection from the initial date until follow-up can take more than 120 days.

MR. DONOVAN: Then why does your letter of October 6, why isn't it in compliance with your code?

MR. PECCON: We divided it in quadrants and applied that statute to four different sections.

MR. DONOVAN: But then you changed your mind.

MR. PECCON: No. After the 120 days passed, what are we to do after the 120 days pass?

MR. DONOVAN: My understanding from the testimony is that you went out and inspected those 40 units on January 29.

MR. PECCON: Follow-up inspection,

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that's correct.

MR. DONOVAN: Where are the results of that inspection?

MR. PECCON: We have that, and we can get that printed out, and we can enter that into the record here as well.

MR. MONTGOMERY: I don't even know if it's necessary because the Borough at this point is just saying that the only issue from the Borough's perspective is the non-payment of the fees that they contend are required. I don't think that record of the inspection is really germane to what's going on here tonight.

MR. DONOVAN: Well, I'm just creating a record, and I don't think I have seen a bill for \$2,040 either.

MR. MONTGOMERY: What else do you have, Mr. Donovan?

MR. DONOVAN: I would like to put Mr. Peccon's February 11, 2015, e-mail into evidence. I think we're up to Exhibit No. 6; is that correct?

MR. MONTGOMERY: I think it's Exhibit 5, sir.

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MR. DONOVAN: I'll make this Exhibit 5, and, I'm sorry, I don't have copies for everybody.

(Pine Tree Exhibit No. 5 was marked for identification.)

MR. MONTGOMERY: You can just hand that to the court reporter, sir.

MR. DONOVAN: Right. Mr. Peccon says, Jackie, I was pulled into a meeting last night that has major implications for the inspection process at Pine Tree and Brentshire. I'm sure that both yourself and your superiors are going to be unhappy with the meeting outcome, but this is something that was decided at the Council level. Our department was essentially given an ultimatum to hold all landlords to the 120 day maximum to abate violations.

So on one hand your agents, Mr. Costa and Mr. Peccon, are saying you can have 120 days to do the first 40 apartments, and then on the other hand, Council says, no, agents, you don't have that authority. We're telling you you have 17 days to fix these other 160 units.

MS. FOX: At this time I would