



CITY OF SOMERVILLE, MASSACHUSETTS
MAYOR'S OFFICE OF STRATEGIC PLANNING & COMMUNITY DEVELOPMENT
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HANNAH CARRILLO, STAFF TO CONDOMINIUM REVIEW BOARD

Date: June 3, 2019

CONDOMINIUM REVIEW BOARD STAFF REPORT

Site: 24-26 Teele Ave., Unit 26

Applicant Name: Craig Boreth and Corinne Bendersky

Tenant Names: Andrea Hoerner, Lauren Maher and Alexandra Wickham

Legal Notice: Request from for Removal Permits to be issued for Unit 26 at 24-26 Teele Ave., Somerville
Date of Public Hearing(s): June 3, 2019

I. Description of Request

This staff report is being provided to the Board in advance of the Condominium Review Board meeting scheduled for June 3, 2019 to inform the Board of background information involving the Condominium Conversion application for Unit 26 at 24-26 Teele Ave. Unit 24 was converted to a condominium unit in 2002; however there is no evidence that Unit 26 was ever converted. Because of this, owners Craig Boreth and Corinne Bendersky applied to convert the unit to a condominium unit and first went before the Board on April 22, 2019.

II. Background

On April 10, 2019 staff received an email from attorney William Schramm requesting the Removal Permit for 24-26 Teele Ave. On April 11, 2019 staff emailed the permit that was found on file, which was for Unit 24 only. Upon request, staff retrieved the physical file to review the original application and found no record of Unit 26 also being applied for in the application. Given that there was no record of a Conversion of Unit 26 ever having taken place, staff informed Attorney Schramm that the owner would need to apply for a Removal Permit for Unit 26.

III. Timeline of Application

On April 16, 2019, staff received an application which included tenant paperwork and affidavits from tenants indicating that they agree to waive their right to the notice period and their right of first refusal. The application also indicated that one tenant is low-/moderate-income, and therefore entitled to enhanced protections under the Ordinance. In response to this information, staff requested from Attorney Schramm the contact information for all three tenants, in order to confirm whether or not the tenants fully understood the rights they were waiving and what they were entitled to as prescribed by the Ordinance.

On April 17, 2019, staff emailed the three tenants to inquire about whether or not they understood their rights as afforded by the Condominium Conversion Ordinance. The email included an explanation of their rights and the income limits that define low-/moderate-income tenants. No response was received from any of the tenants prior to the Condominium Review Board hearing on April 22, 2019.

On April 22, 2019, Attorney Schramm went before the Board to present the application. Ultimately, the Board voted to table the application and requested verification that the low-/moderate income tenant had received the proper relocation payment in the amount of at least one month's rent. Although Attorney Schramm informed the Board that \$1,400 was paid to the low-/moderate-income tenant, the Board opted to continue the application in order to allow time for verification to be provided by the tenant directly. The Board also requested that Affidavit B (included in the application) be resubmitted, as what Attorney Schramm had provided was a redacted version. Attorney Schramm explained that as he felt it could not be signed given the particular circumstances of the conversion. The Board felt however, that this document should be amended rather than redacted, and requested an updated version be submitted by the next Board meeting.

On April 23, 2019, staff emailed all three tenants again, in an effort to determine whether or not the tenants understood their rights and whether any relocation payment had been made. On that same day, staff received an email (see Appendix E) from Andrea Hoerner, a tenant of Unit 26, explaining the circumstances surrounding the notice of condominium conversion. Staff also requested that tenants provide verification of their interactions with the property owner during this process. All documents have been included in an updated application to be reviewed by the Board.

On April 23, 2019, Attorney Schramm confirmed with both staff and the low-income tenant that the \$1,400 payment the tenant had previously received, of which she was requested to return \$900 for May rent, was hers to keep in full as a relocation payment. Verification was provided from both Attorney Schramm and the tenant that \$1,400 was paid and received. Staff confirmed verification of this payment with the attorney on April 29, 2019.

IV. Timeline of Notice to Tenants

Initial notice that the unit might be sold was provided on February 25, 2019 (see Appendix A).

Notice was provided on March 6, 2019 (see Appendix B) informing the tenants that a realtor would be coming by to take pictures of the unit to begin marketing. The response from tenant Andrea Hoerner is also included, indicating concern at the speed with which the process was moving.

On March 15, 2019 maintenance workers entered the apartment with less than 24 hours' notice, while the tenants were still in the unit (see Appendix C). The tenants were ultimately forced to leave the unit for the day as they did not have access to the bathroom or the kitchen (see Appendix D). They were not notified that they would not have access to their kitchen or bathroom, nor were they provided the 48 hours required notice.

Tenants received an email on April 13, 2019 from owner Craig Boreth (see Appendix G) requesting that they waive their right to the notice period and right of first refusal, admitting he had not realized the unit had not been previously converted. An offer for the unit was never provided; rather it was assumed the tenants would not want to exercise this right based on the owner having received calls for landlord references on behalf of the tenants for other units. However, tenants were only searching for new units due to being told they had to leave, without knowing at the time that they had the right of first refusal and to an extension of the lease in accordance with the appropriate notice period.

In response to an email sent on April 25, 2019 by staff inquiring whether or not it was the intention of tenants Lauren Maher and Alexandra Wickham to move (the lease provided was unsigned), staff received a response from Ms. Maher on April 30, 2019 indicating they did intend to move on June 1, and provided detail on the manner with which she was asked to sign a waiver of her tenant rights (see Appendix H).

In response to an email sent by staff on May 10, 2019 requesting the tenants send an email with a breakdown of all costs incurred by this conversion for clarity, staff received an email from Ms. Hoerner breaking down costs, and explaining what a challenging and rushed situation this has been (see Appendix I). As Ms. Maher and Ms. Wickham are not moving until June 1st, they do not yet have final figures, but they will follow up with that information once able. In a follow up call on May 13, 2019, Ms. Hoerner made it very clear to staff she would not have moved had she known her rights to the unit during the conversion process.

V. Applicable Somerville Condominium Conversion Ordinance Sections for Consideration:

Below are relevant provisions in the Somerville Condominium Conversion Ordinance for Board consideration in regard to potential action on the application:

Sec. 7-66 Removal of Rental Units

(d) Considerations

- (1) The benefits to the citizens of the city of issuing the permit;
- (2) The hardships imposed on the tenants residing in the unit proposed to be removed, including any mitigating provisions made by the applicant; and
- (3) Any aggravation of the shortage of rental housing accommodations in the city, especially of units suitable for families of low and moderate income, for elderly, for handicapped, or for people on fixed incomes, which may result from the proposed removals.

Sec. 7-76 Notification of conversion

- (a) A declarant who intends to convert a housing accommodation to condominium ownership must give the board and each of the tenants of any and all rental units therein written notice of his or her intention to so convert the premises no later than one year before the declarant files a master deed.
- (c) However, in the case of a housing accommodation occupied in whole or in part by a handicapped tenant or occupied by an elderly or low or moderate income tenant, the period of notice for each such tenant shall be no less than two years.
- (e) All notices given pursuant to this section shall be personally served upon tenants or mailed to tenants by certified mail. The notice shall advise tenants of their rights and of the procedures that exist under this article. It shall also include a statement of such tenant rights and procedures as exist under the rules or regulations of the board governing removal from market of rental units in order to convert them to condominiums as the board may adopt from time to time pursuant to the authority granted by this article.
- (f) No tenant may be given notice by the declarant to vacate the premises upon less than the one-year notice as provided in subsection (b) of this section, except by reason of nonpayment of rent, conduct that

disturbs other tenants' peaceful enjoyment of the premises, or other substantial violation of the terms of the tenancy. The terms of the tenancy may not be altered during any notice period under this article. Failure of a declarant to give notice as required by this section shall be a defense to an action by the landlord to recover possession of the rental unit.

(g) Nothing in this section permits termination by a declarant of a housing rental agreement in violation of its terms. Any tenant under a housing rental agreement shall have the right, at any time after receipt of a notice pursuant to subsections (a), (b) and (c) of this section, to terminate the housing rental agreement upon 30 days' written notice to the landlord, which 30 days shall start to run from the date the next rental payment is due. Such termination shall be without penalty or other termination charge to the tenant.

Sec. 7-69. Tenants' right to purchase unit

(a) After the granting of a removal permit for condominium conversion or sale pursuant to section 7-66, the declarant shall make a written offer to convey each unit to the tenant who rents or leases that unit. The offer shall be made within 30 days of the granting of the removal permit, or the filing of the master deed, whichever comes later, and shall remain open for another 30 days.

(b) The tenants' right to first purchase expires at the end of the 30-day period following the declarant's offer.

(c) If the tenant and declarant do not execute a contract for purchase and sale of the unit during that 30-day period, the declarant may not offer to sell that unit during the following 180 days after the expiration of that 30-day period at a price or on terms more favorable to the prospective purchaser than the price or terms offered to the tenant. This section will not apply to any condominium unit which is converted to exclusively nonresidential use.

(d) If a declarant, in violation of subsection (a) of this section, conveys a unit to a purchaser for value who has no knowledge of the violation, recordation of the deed conveying the unit extinguishes any right a tenant may have under subsection (a) of this section to purchase that unit, but does not affect the right of the city to prosecute the declarant for a violation of subsection (a) of this section.

Sec. 7-70. Tenant relocation reimbursement

(a) When a declarant or other landlord recovers possession of a rental unit pursuant to the granting by the board of a removal permit pursuant to section 7-66, the tenant thus displaced who meets the qualification of this section shall be entitled to recover from the declarant the costs of relocation.

(b) Within 14 days after receiving a receipted bill for the costs of relocation, the declarant must pay actual moving expenses to a maximum amount of \$300.00 or one month's rent per rental unit, whichever is higher, for any tenant and the tenant's family whose total income for the previous year was equal to or less than the qualification income for Section 8 Housing Assistance for the city. Failure of the tenant to tender verification of income upon written demand by the declarant shall constitute a waiver of the right to receive funds.

Sec. 7-71 Access and repair to units

(a) The tenant in a rental unit for which a removal permit for condominium conversion has been granted by the board shall not unreasonably withhold consent to the declarant or his or her agents or designees to enter the unit in order to inspect the premises, obtain data, or show the unit to prospective or actual workers or purchasers. The declarant shall give the tenant at least two days' notice of an intent to enter the unit and may enter only at reasonable times.

(b) A declarant or other landlord shall not undertake rehabilitation, repair, or improvement of a rental unit even if a removal permit has been granted by the board, while the unit is occupied by a tenant, nor permit or create any unreasonable disruption of the common areas of a housing accommodation. "Unreasonable disruption" shall include, but is not limited to restricting access to common areas or units, interference

with the quiet use and enjoyment of the premises, abuse of the right of access to units or harassment of tenants.

IV. Staff Recommendation

Among options the Board could consider under the circumstances surrounding this application are:

- 1) That the Board deny the application, as:
 - a. Notice was not properly given;
 - b. Tenants were not properly notified of work to be done in the unit and were not properly informed as to what that work would entail; and
 - c. Tenants were asked to waive their right to the notice period and to purchase their unit in an effort to facilitate and expedite the sale of the unit as a condominium unit.

As all three tenants have found alternative housing and have indicated they would rather relocate at this point than exercise their right to the applicable notice period, a denial would not impact the tenants directly, however, it would impact the applicant. The application may not be resubmitted for six (6) months following the denial, and thus the unit would remain vacant during that time.

- 2) That the Board approve the application, conditioned on the Owner paying any and all moving expenses for all three tenants, not only tenants who are low-/moderate income. In this case, the unit would not sit vacant for at least six (6) months as there would be no need to resubmit the application, and all of the tenants would be compensated for their trying experience.
- 3) That the Board approve the application conditioned on any necessary payment outlined in recommendation #2, and require payment of a fine in an amount consistent with precedent found in Somerville Code of Ordinances Section 11-1.

The Board reserves the right to have staff supplement or modify this report based upon any new evidence presented to the Board.

APPENDICES

Appendix A

Probably Putting 26 Teele on the Market > Inbox x



Craig Boreth <cjboreth@gmail.com>

Mon, Feb 25, 11:51 PM ☆ ↶ ⋮

to me, Lauren, Ali ▾

Hi Guys:

Wanted to let you know that we're considering selling 26 Teele. It's not definite, and we're not set on the timing, but this will not affect your lease through the end of May.


It's quite possible that there will be an opportunity to continue after June 1 on a month-to-month lease, but we don't foresee renewing the lease for an entire year.

You've all been GREAT tenants, and you've made it really easy for us to manage the place. I'm happy to give any references you need, and please let me know if there's anything I can do to help (I know it's a major pain to move).

Let me know if you've got any questions, and I'll keep you in the loop as things move forward.

Thanks,
Craig

Appendix B

Realtor visits, etc.  Inbox x



Craig Boreth <cjboreth@gmail.com>

Wed, Mar 6, 4:17 PM



to Ali, me, Lauren ▾

Hi Guys:

I'm hoping that the Realtor, Jen, can stop by on Tuesday at 3 to take some photos of the place. She may need to arrange to get a key made before then.

I know this is going to be annoying to have them coming around, and we'd need to schedule open houses over next weekend at the earliest, so I'm happy to give you each \$100 for the inconvenience.

Does that work for you?

Thanks,
Craig



Andrea Hoerner <arhoerner@gmail.com>

Thu, Mar 7, 11:38 AM



to Lauren, Craig, Ali ▾

Dear Craig,

I must say I am a bit caught off guard here as the tone from your email last week made it sound like things were moving slowly. Jen has reached out, and I unfortunately cannot leave work at 3pm on Tuesday as I am in back to back meetings. I will note this with her, but I would strongly prefer that any open houses or house viewings are run by us beforehand as I'd like to try and be home if possible. Do you see this starting as early as next week and continuing throughout the next three months?

Additionally, I feel uncomfortable with having my personal photos in my bedroom on the walls put on the internet in photos for the room. Perhaps, the photographer can try to take photos of my room that don't include them or use old stock photos from before I moved in 4 years ago when the house was empty and on the market.

I will let Lauren and Ali weigh in on their ends.

More documents   

Appendix C

Thanks and Update  Inbox x



Craig Boreth <cjboreth@gmail.com>

Thu, Mar 14, 4:26 PM



to Ali, me, Lauren ▾

Thank you guys so much for accommodating Jen. The place looks fantastic.

Delson is going to come by to fix a few things -- replace lightbulbs, fix the kitchen faucet, etc. I'm hoping he can do it during the day tomorrow. He's going to let me know soon.

Thanks,
Craig



Andrea Hoerner <arhoerner@gmail.com>

Thu, Mar 14, 9:50 PM



to Jennifer, Craig, Ali, Lauren ▾

Dear Craig,

Ali just informed us that Jen texted to say in addition to Delson coming out tomorrow that there will also be cleaners coming. We understand the Open House is important, and we are happy to tidy up our rooms and such before we leave for the designated time slots this weekend.

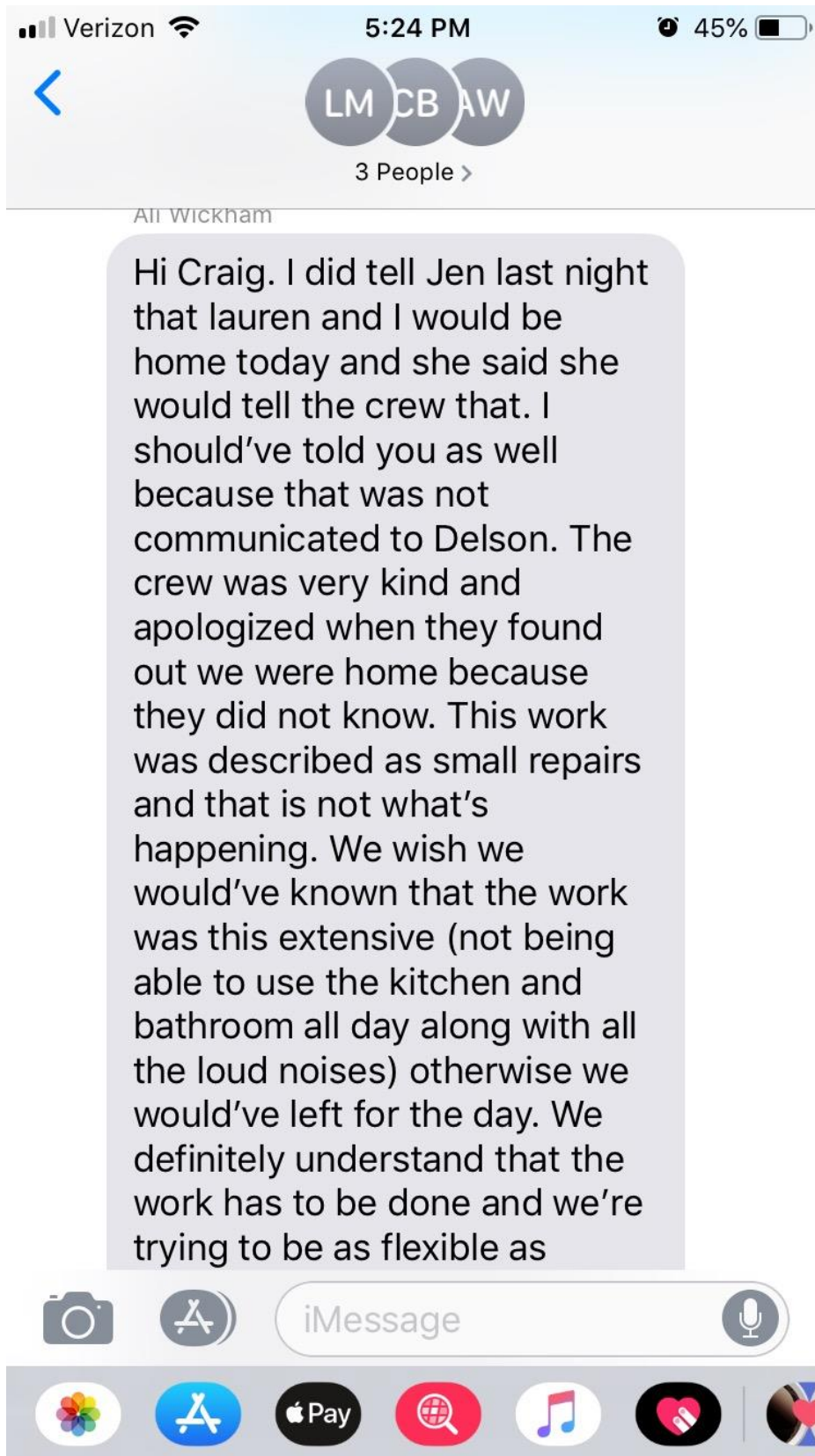
However, we feel uncomfortable that we were given less than 24 hours notice about the cleaners, and we don't feel comfortable with people we don't know coming into our rooms. The outer areas are fine, but again, it would have been better to know this ahead of time, especially since we have been accommodating since the start of this process.

Ali mentioned these concerns to Jen, and she said that she would tell the cleaners to stay out of the bedrooms, and I hope we are all on the same page now.

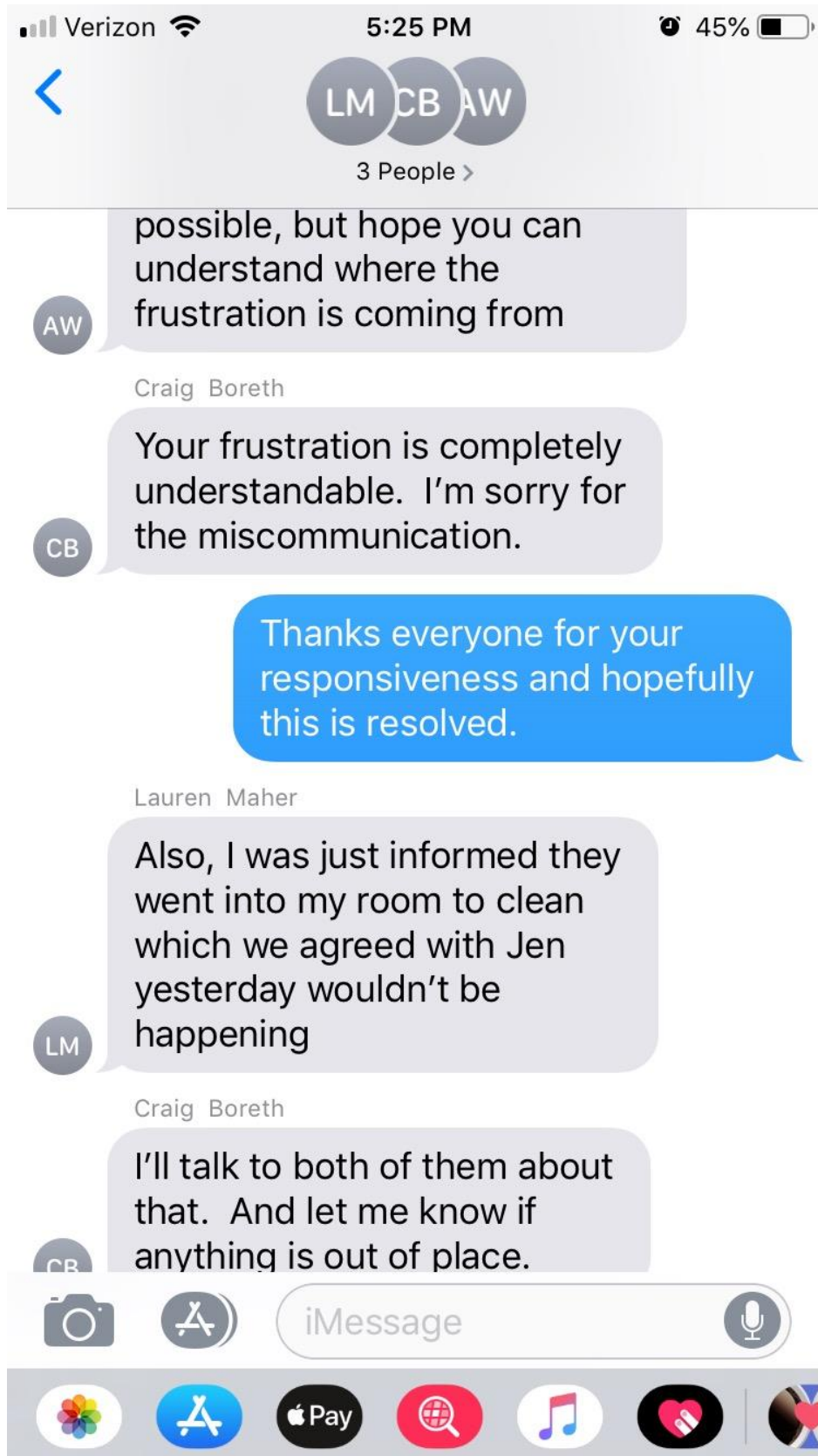
Thank you,
Andrea



Appendix D



Appendix D (cont'd)



Appendix E

Re: Condominium Conversion
Sent: Tue 4/23/2019 12:20pm
To: Hannah Carrillo

Hi Hannah,

Basically, this process has been a nightmare for me personally. We were originally told by the landlord in late February that he might sell the condo but we could stay on past our lease on a month to month basis. Then around March 1, he said he was selling the place and told us to work with the realtor. We complied with photography shoots, cleaning the house, copying of keys, etc. We were given less than 24 hours notice (around 3rd week of March) for the handyman repair person we had worked with a few times before to come and make "minor repairs like changing light bulbs" a day before the Open Houses, which we were asked to leave for and did.

This turned into 3 unfamiliar men entering the house painting walls (fumes), pulling out the stove and replacing the sink, along with taking each cabinet door off. My two young female housemates woke up to men in the house painting over their doorways. I got a frantic phone call from them at work saying that there were not minor repairs like lightbulbs being changed, and they couldn't use the kitchen/bathroom. Realtor was nowhere to be found, so these people were just in our place sanding, painting, etc in our home. My housemates could not even use the restroom because they were fixing a towel holder, so they had to go Dunk'nDonuts and eventually left the home unsupervised because of the smell/noise disturbance.

I called my landlord to try to understand what the nature of the work was as it wasn't light bulbs, and he said he knew about the walls being painted or a wall being painted. He also couldn't get ahold of his contact who oversaw the crew because he wasn't on site at that time. Fast forward to 5pm when I arrive home from work to find my house full of three men, who didn't speak English (luckily I speak Spanish) to find out they've been unattended all day in our home and the house reeks of fumes. As a compensation for the whole selling process, we were each given \$100 for the times we had to leave the house, etc.

The next debacle was the estoppel agreement, which was repeatedly emailed to me by the realtor and not explained well. I finally found a place about a week and a half ago, and I wanted out of my lease. I did not know until April 16 that I had tenant rights for the condo/purchasing/etc or that I could void my lease. In order to sign the estoppel, which made me responsible for the final month's rent, I asked my landlord to pay me the final month's rent ahead of time so that I would sign and then re-pay whomever back. I did not realize our lease would be void given my rights, which again were given to me afterwards. A lawyer dropped off the tenant's rights and affidavits on April 16, and I read the document before signing. No, I did not know about any of this before I went and found a new place. Quite frankly, I am so frustrated and irritated with this whole process that I just want to be done and move on since my new move in date for my other place is May 1.

Like I said, I signed an estoppel saying I was responsible for May's rent (not knowing I could have voided the lease per my rights), but my landlord paid me that money in advance as he was willing to "let me out of the last month." I firmly asked my landlord to compensate me for moving costs given the hardships he has caused before knowing/reading my tenant's rights about compensation. I originally asked for him to cover my realtor fee or half of it which he said was too expensive (\$1900 or \$950), so he begrudgingly agreed to pay me \$500 for moving costs. I don't think my housemates have asked him for anything, but I'm not sure. They were trying to chase one of them down as she was in PA helping her mother go through Chemo treatment!

Alas, this is all to say, I just want to be done with this. If I am owed extra money, great. I just never want to have to do this whole thing again!

Thanks,
Andrea

Appendix F

Documents

Andrea Hoerner

Sent: Tue 4/23/19 5:23 PM

To Hannah Carrillo, Lauren Maher, Ali Wickham

Hi Hannah,

Lovely talking to you and many thanks! I just talked to my housemates as they are on their way to go find a realtor. The lawyer made my one housemate fedex the day of the affidavit and overnight it while she was in PA. Both housemates agreed that they had no idea exactly what they were signing or what their rights were. They would like compensation as well. Please help us!

Attached are photos from the workers who came on March 15. We were given notice that they would be arriving at 8am the evening before. Please see attached email where "small repairs like light bulbs" were described. I am going to send a bunch of things to you...

Best,
Andrea


Appendix G

Hopefully one last form to sign...  Inbox x



Craig Boreth

to me ▾

 Sat, Apr 13, 11:56 PM (10 days ago)



Hi Andrea:

As I mentioned, there's a Removal Permit that my lawyer should have obtained when I converted the building to condos in 2002. I just found out two days ago that he neglected to obtain that permit, and the buyers' attorney is demanding I get it within the next two weeks.

In order to get the permit on such short notice, I need to ask you to waive your rights as tenants under the Somerville Condominium Ordinance. The two main points are:

1. You as a tenant are given the right of first refusal to purchase the property if you want to. And;
2. There is supposed to be a one-year advance notice of a conversion to condominiums.

As I mentioned, I assumed all of this was taken care of 17 years ago, when the building was converted, and would not be an issue at all at this time. The notification requirement means that you would have the right to stay in the apartment for a year from this notification (I was unaware of this notification requirement until my lawyer told me about it today).

So, I'm requesting that you waive those rights and allow the sale of the property to go through as planned. If you are amendable, I can have Jen come by and pick up the signed affidavit on Monday or Tuesday.

Please let me know if you have any questions or concerns.

Thanks,
Craig

Appendix H

From: Lauren Maher

Sent: Tue 4/30/2019 2:26PM

To: Hannah Carrillo

Hi Hannah,

Yes it is our intention to move, we have all signed leases.

For me, the form was sent to me via email. Craig's lawyer called me one morning knowing I was out of town with my ill mother to ask me to print, sign, and deliver a form to a fed ex that day to overnight it by 5:30 pm.

Thank you again for your help!

Lauren

Sent from my iPhone

Appendix I

From: Andrea Hoerner

Sent: Fri 5/10/19 8:38 PM

Hi Hannah,

Costs have been:

Movers: \$1,029.44 (only company available on such short notice)

Realtor Fee: \$1900

Key Fee: \$100

First/Last: \$3800

Moving Supplies (2 medium size moving boxes, 5 large boxes along with tape and wrapping paper):
roughly \$70

Furniture: \$900 (my old furniture was too big to fit in the new smaller place...thus I've had to sell the old pieces and buy new things)

Since I cannot afford to live alone, I took this new apartment needing to find a housemate. Mind you-I already had two housemates in my old place that I personally found, but they decided to live with a friend from their dance company in need of a place, which is fine. This is to say that until I find a suitable housemate (who will have to go through an application process with my new apartment's management company which will take time), I am covering all rent and utilities. Thus, I am paying \$1900 a month plus \$50 cable and electricity (haven't received a bill yet) on my own. As you can remember, I qualified for low income housing or whatever it was on that affidavit, so this has been a big burden for me personally.

All of this monetary stuff doesn't even cover the mental/emotional stress that this process has taken on me and the crap my housemates and me were put through between construction workers/the landlord's realtor, etc.

Can you tell me a little more about the hearing? What exactly does the Board need to hear and what exactly do we (my housemates and me) stand to gain?

Thanks,
Andrea