

Minutes of the Board of Adjustment STUDY SESSION January 25, 2023

**Minutes of the Study Session of the Board of Adjustment, of the City of Tempe, which was held in Council Chambers
31 East Fifth Street, Tempe, Arizona**

Present:

Staff:

Board Member John 'Jack' Confer	Jeff Tamulevich, Community Development Director
Board Member Richard Watson	Ryan Levesque, Comm. Development Deputy Director
Board Member Raun Keagy	Steve Abrahamson, Principal Planner
Board Member Ricky Lynn Gans	Drew Yocom, Code Compliance Administrator
Board Member Brett Siegal (Alternate)	Lily Drosos, Planner I
Board Member Kaelee Palmer	Sydney Deitering, Planning Technician
Board Member David Naugle	Jennifer Daniels, Administrative Assistant II
Board Member Kevin Morrow	

Meeting convened at 5:30 p.m. and was called to order by Staff Mr. Steve Abrahamson

Mr. Abrahamson asked all Board Members to briefly introduce themselves to the new Board Members.

Mr. Abrahamson explained that at the moment there were only 2 Board Members present that were at the December 14, 2022, 3 including himself that would be able to vote on the Meeting Minutes. If Board Member Siegal was present for the Regular Meeting a vote will take place at that time because a quorum will be met.

Mr. Abrahamson announced that there is 1 case to be heard by the BOA tonight. The case is an abatement appeal for the Gay Residence located at 625 West 3rd Street. Board Member Keagy asked staff about the burned or partially burned structure in the rear yard that appears in the pictures of the staff report. Is that part of the abatement as well? Staff Mr. Drew Yocom stated that the building is not a part of the abatement case. At the time of the Hearing Offer's hearing staff asked for approval of abatement on the junk and debris only in the front and back yard as well as the removal of a vehicle (a van located in the driveway). The van was then moved to the lawn and became a lawn parking violation. At the time of the hearing the vehicle was no longer at the residence and has not been back since. Currently, it is only about the junk and debris. Board Member Confer asked Mr. Yocom to explain the process on how the city receives bids for abatement of properties and how the amount was reached for the abatement in this case. Mr. Yocom explained the city has a procurement office, and it goes through a competitive bidding process. This is done annually. This last year the city reached out to over 100 businesses. The best businesses for the practice were selected as well as the pricing. In this case Artistic Land Management is the contractor that submitted the bid. They have been on a contract with the city for 10 plus years. All contractors used will send in a bid on the property. They are given photos of the property and an explanation of the violations. The contractor then physically goes to the property to evaluate the situation themselves. The contractor will then let the city know the cost of what their bid would be. The city then selects the lowest price. Board Member Confer asked if the city received more than 1 bid for the property and was this the cheapest one. Mr. Yocom stated, yes more than 1 bid was received and yes this was the cheapest bid. Board Member Palmer asked if the bids are typically itemized or is it a lump sum. Mr. Yocom stated that it is itemized up front because in these types of abatements we find ourselves doing more or less work. An inspector and supervisor are on site conducting all abatements. They are there to monitor the number of people on site and keeping track of the progress. The invoice after the abatement is what the city compares to the actual contract. This is done to verify that what took place is in line with what the contract says. Board Member Keagy asked if the bid for \$18,000 will be lower due to the work that has already been done by the applicant. Mr. Yocom stated

yes. Board Member Naugle asked if staff checks with the fire department or police department regarding issues. Mr. Yocom stated that it depends on the situation. In a code compliance case if there is communication from the applicant that they are financially or physically unable to take care of something we have resources to get them in touch with. In this case if the damaged building was on the Fire Departments radar, Code Compliance would be notified and then the Fire Department would get involved. Board Member Naugle stated he was speaking in regard to access. Mr. Yocom stated that if the city was unable to access the property that would be part of the abatement assessment. The city would then go through a citation process with the courts and not the abatement process. Board Member Morrow asked when the city receives code compliance complaints are they confidential and not subject to be reviewed by the property owner. Mr. Yocom stated when a complaint comes in the caller has the opportunity to remain anonymous. If they choose not to remain anonymous that is subject to a public records request if that request is made. In this scenario the complaint was anonymous.

Mr. Abrahamson stated that an appeal of an abatement is truly understanding what the Hearing Officer's evidence was at the time of the hearing. The board will approve or deny the appeal of the decision that the Hearing Officer made based upon the evidence she had at the time. Board Member Confer referred to the original letter that was sent out listed 1 citation. As you go through the document there seems to be additional citations added in. Board Member Confer asked if we know if the Hearing Officer looked at the violations cited on the original letter verses the citation the applicant was cited for. Mr. Yocom stated that the Hearing Office reviewed an abatement packet that was submitted highlighting the entirety of the process starting in June up until the hearing date. There was evidence of multiple violation notices as well as a citation that was issued. The inspector also spoke about how the actual decision from the court hearing that the defendant showed up at was found responsible by the judge. Pictures from the property were shown at the abatement process that were taken the day of the hearing.

Mr. Abrahamson introduced Alternate Board Member Brett Siegal. Board Member Siegal will complete the quorum needed to vote on the previous hearings Meeting Minutes during the Regular Session.

Mr. Abrahamson stated the next item to discuss would be the election of chair and vice chair. Board Members can nominate themselves or nominate another member. Board Member Confer nominated Board member Watson for Chair. Board Member Watson nominated Board Member Confer for Vice Chair. Board Member Keagy seconded both nominations.

Mr. Abrahamson inaudible

Election of Chair

Motion by Board Member Confer to elect Board Member Watson for Chair: second by Board Member Keagy. Motion passed on **7-0** vote.

Ayes: Board Member Palmer, Morrow, Naugle, Confer, Gans, Keagy and Watson

Nays: None

Abstain: None

Absent: None

Election of Vice Chair

Motion by Board Member Watson to elect Board Member Confer for Vice Chair: second by Board Member Keagy. Motion passed on **7-0** vote.

Ayes: Board Member Palmer, Morrow, Naugle, Confer, Gans, Keagy and Watson

Nays: None

Abstain: None

Absent: None

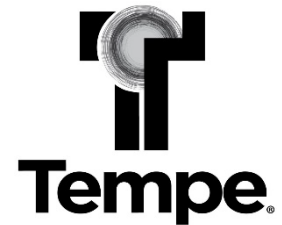
Board Member Watson stated that there was not a motion to adjourn in the last couple of BOA Meetings he attended. Mr. Abrahamson stated that we should do a motion to adjourn and that is up to the Chair to do.

Board Member Keagy asked if we anticipate the applicant showing up for the meeting. Mr. Abrahamson stated yes.

Mr. Ryan Levesque presented the Board members a summary of the past court appeal litigations. There were 4 appeal claims in previous years. 1 in 2017, 1 in 2018 and 2 in 2019. They are all similarly related to the site for a medical marijuana site location at Priest and Warner. The most recent court case ruling was back in December where the Court of Appeals affirmed the judge's decision in favor of the City of Tempe denying Image Productions request for the appeal of the use of acceptance letter for another medical marijuana business. Image Productions had 30 days to file a petition to appeal the ruling. They did not file so that court case is final. There is also a 2017 Image Productions case against the city and Board of Adjustment Members claiming vested interest in property rights in the original use acceptance letter in 2015. The appellant decision found that Image could not have such an interest in the property because the 2015 letter was not to Image Productions. The appellant decision was found that our zoning section in its nature it measured to protect and preserve the public health, safety, and general welfare of the City of Tempe. Procedurally the city had filed a summary in a judgment motion in the case before the parties agreed to state which waited on the resolution of the 2018 lawsuit. Image won't dismiss and filed an amended summary judgment adding to the 2018 decision. Another case in 2019 against the city and Board of Adjustment members challenged the denial of a variance based on the theory that the 2015 letter ran with the land which the appellant court rejected. The court decision was that the variance case was not timely appealed. If Image does not dismiss, we will file an answer and proceed to file a summary judgment on the matter. In 2019 there was a similar case with the same claim filed on behalf of Park Dispensary against the city for the same matter. This issue is awaiting the same result. And should result in a dismissal. There will be a full status update after the meeting on March 27, 2023. A summary of the court ruling on the last decision will be provided to all Board Members.

Hearing adjourned at 5:56 p.m.

Prepared by: Jennifer Daniels, Administrative Assistant II
Reviewed by: Steve Abrahamson, Principal Planner



Minutes of the Board of Adjustment REGULAR MEETING January 25, 2023

Minutes of the Regular Meeting of the Board of Adjustment, of the City of Tempe, which was held in Council Chambers
31 East Fifth Street, Tempe, Arizona

Present:

Present:	Staff:
Chair Richard Watson	Jeff Tamulevich, Community Development Director
Vice Chair John 'Jack' Confer	Ryan Levesque, Comm. Development Deputy Director
Board Member Raun Keagy	Steve Abrahamson, Principal Planner
Board Member Ricky Lynn Gans	Drew Yocom, Code Compliance Administrator
Board Member Brett Siegal (Alternate)	Lily Drosos, Planner I
Board Member Kaelee Palmer	Sydney Deitering, Planning Technician
Board Member David Naugle	Jennifer Daniels, Administrative Assistant II
Board Member Kevin Morrow	

Regular Meeting 6:01 p.m.

Staff Mr. Steve Abrahamson opened the meeting and announced the new Chair and Vice Chair that were elected during the Study Session prior to tonight's BOA Meeting. Chair Richard Watson and Vice Chair Jack Confer.

Board Member Siegal was asked to join and sit with the other board members to vote on the December 14, 2022, Meeting Minutes. Board Member Morrow stepped down to allow Board Member Siegal to vote. Mr. Abrahamson announced the former BOA Chair and Vice Chair termed out at the previous meeting held on December 14, 2022. Mr. Abrahamson was authorized to vote on the Meeting Minutes for December 14, 2022, to complete a quorum.

1) **Voting of the Meeting Minutes:**

Study Session & Formal Meeting Minutes from December 14, 2022.

Motion by Vice Chair Confer to approve Meeting Minutes from December 14, 2022; second by Board Member Keagy. Motion passed on **4-0** vote.

Ayes: Vice Chair Confer, Board Members Keagy and Siegal, Steve Abrahamson

Nays: None

Abstain: Chair Watson, Board Members Palmer, Gans, Naugle, Morrow

Absent: None

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- 2) Appeal the December 6, 2022, Hearing Officer's decision to approve the 180-day open abatement request for the **Gay Residence**, located at 625 West 3rd Street. The applicant is William Gay. (PI220354/CE223306)

Applicant Presentation:

Applicant Mr. William Gay gave a presentation. Mr. Gay stated that the amount given to abate his property seems high. Mr. Gay states the administrative fee is based on the amount of the abatement cost. Most of the debris in the yard is construction supplies being used to currently build a shed in the back yard. Mr. Gay stated he has been working on it to reduce the piles. Mr. Gay stated he does not know why there is any question on what is in his back yard because you cannot see it from the street or the alley. Mr. Gay stated that he took a ladder and set it up by the neighbor's front porch on the 2nd floor of the apartments behind his house and you are still unable to see into his back yard. Mr. Gay stated he understands the front yard had a lot of debris in it and has since cleaned up the front yard. The other issue on the complaint was vehicle registrations. This issue has also been taken care of. Mr. Gay stated he is requesting a dismissal of the Hearing Officer's decision because he can not afford \$18,000. Mr. Gay stated he is unaware of who called in the complaint regarding is yard and would like to know.

Vice Chair Confer asked Mr. Gay if in his opinion there are no more violations in the front yard, vehicles have been registered and the only thing that is an issue as of today is the back yard. Mr. Gay stated yes. Vice Chair Confer asked Mr. Gay if he has been through the abatement process before and if so, how long ago was that and what was the result. Mr. Gay stated yes, 3 or 4 years ago. The result was they came in stole and all his materials. Mr. Gay stated he then had to buy more material to work on the things he is working on in the back yard. Vice Chair Confer asked Mr. Gay if he appealed the previous abatement. Mr. Gay stated yes, he did.

Board Member Morrow asked Mr. Gay what day the pictures were taken that he submitted of the property. Mr. Gay stated December 19th.

Staff Presentation:

Ms. Lily Drosos gave a presentation. Ms. Drosos stated that the Gay Residence is located at 625 West 3rd Street. On December 6, 2022, the Hearing Officer made the decision to approve the 180-day open abatement for the Gay Residence. The documents and materials in the staff report that the Board Members were given are the same materials that the Hearing Officer was given to help inform her of her decision. At the December 6, 2022, Hearing Officer meeting Code Inspector Michelle Van Etten gave an overview of the case. The case was initiated on June 1, 2022, for junk, trash, and debris. Several complaints were received by the Code Compliance Division. A citation was issued to the Gay Residence. The property owner did not pay the fee and it was sent to collections. At the time of the hearing Mr. Yocom stated that no contact had been made by the property owner or any other member of the public to speak on behalf of the case. Hearing Officer MacDonald approved the 180-day open abatement for the residence. The open abatement commenced on December 6, 2022 and will end June 4, 2023. Mr. Gay filed his appeal within the required 14 days on December 20, 2022. Ms. Drosos stated she did receive a phone call this week from a neighbor expressing a concern for the violations on site.

Mr. Yocom gave a presentation. Mr. Yocom stated this case was initiated by an anonymous complaint on June 1, 2022. At this time the same violation of junk, trash and debris is still in violation more than 7 months later. During the course of the case the property owner was found responsible for the same violation of junk, trash and debris in court. The court date was on September 15, 2022. During the process a Hearing Officer abatement notice was issued to the property as well as certified mail. When the inspector posted the notice at the home a conversation took place with Mr. Gay regarding the Hearing Officer meeting and date. Mr. Gay did not attend the Hearing Officer meeting. No comments or notification was received by the city for the meeting.

Board Member Keagy asked Mr. Yocom about the \$18,000 abatement cost and if that was cost was based on the original bid. Will the cost be reduced based on the amount of material that is left at the residence. Mr. Yocom stated yes, the cost should be reduced by quite a bit. There was a lot of material in the front yard that has since been removed and the vehicle is no longer in question. What the exact cost is would need to be determined at the site when the abatement takes place.

Board Member Morrow stated that his reading of the city code includes prohibitions on junk, trash and debris in an enclosed back yard and front yard. Is that correct. Mr. Yocom stated that the code is very general because it is hard to list what every item might be but it does include in the language about things that are in a deteriorated state as well as items stored on a property not in an enclosed area. That would be items like a shed or home. Board Member

Morrow asked when the abatement occurs anything store in a shed or garage would not be subject to the abatement. Mr. Yocom stated that is correct.

Public Comment:

Mr. Robert Jones, Mesa, Arizona stated that he is helping Mr. Gay build the sheds in the back yard. Mr. Jones stated that Mr. Gay has cleaned up a lot of the debris. This situation has been going on awhile. Possibly a neighbor has it out for Mr. Gay. Mr. Jones said that the yard does not look as bad as everyone is acting that it does. Mr. Jones stated that Mr. Gay's neighbors have known him forever and that they are all great people. If they had a problem, wouldn't they have come over and said something to Mr. Gay. Mr. Jones stated that Mr. Gay is a good guy and just has a little bit of stuff that he is currently working on.

Applicant Response:

None

Commission Discussion:

Board Member Keagy applauded Mr. Gay's ability to make a significant change on the property over the time the violations have been in existence. The city does follow up on concerns that are brought to their attention and follow them through until the end. If there is something still that is not in compliance, then it becomes our (the city) responsibility to make sure it does come into compliance. While Mr. Gay has made progress it's a good reflection on Mr. Gay and the community and the neighborhood in general. The boards job tonight is to determine weather or not the Hearing Officer erred in her way or erred in any judgment any factual information that was presented at the time. Board Member Keagy stated in his opinion and what he has read there was no error made there. He will be supporting the Hearing Officers findings in this case. He encourages Mr. Gay to continue making progress on the property to lessen the amount of the abatement.

Chair Watson stated that when complaints are called into the city the called is able to remain anonymous.

Vice Chair Confer stated he has 2 concerns. It appears that it has been a slow compliance with this incident. Vice Chair Confer believes he remembers when the appellant appeared before the board previously. Vice Chair Confer's first concern is the cost and does not how we can resolve that. The amount seems high but is unsure he has seen all the pictures. It can only be based upon what he sees tonight. The 2nd concern is the 15% administrative fee that the city adds. Is it possible in the board's decision to waive the administrative fee? The board's job is to make sure things are cleaned up. If the board does vote to proceed with the abatement, he would be in favor of waiving the administrative fee.

Chair Watson stated he understood that the board was the approve or deny the Hearing Officer's decision. Does the board have the ability to make modifications to the agreement? Mr. Abrahamson stated no, the board does not. Mr. Abrahamson stated the fees are not on the table.

Board Member Keagy stated that it is an ordinance requirement, and those things can not be varied. Mr. Keagy stated that he would like to offer another opinion on the administrative fees. The staff that is present tonight would not need to be here tonight. And paying them to be here if the abatement was not required. That administrative fee in some part is trying to gain back some of the monies that is spent by the City of Tempe. Even if the board was able to waive the administrative fee, he would not be inclined to want to reduce the fees.

Chair Watson that is a very good point. Where some of the heart burn is with regard to what the assessment is for the abatement. That seems like a lot of money considering the work Mr. Gay has already done to date. Word from Mr. Yocom is that fee will be adjusted once the abatement begins. We are looking at approving the Hearing Officers decision or not. Personally, I would like to see the amount reduced for Mr. Gay. This process started in June and a lot of time has passed.

Board Member Morrow stated that this process started in June, but it is a reoccurring process, and the problem continues and believes the abatement is necessary to fix the problem since Mr. Gay has been unable to keep the property in compliance or bring it back into compliance. Although the amount does seem excessive.

Board Member Confer stated he is unable to access the Arizona statutes. There are several statutes that he operates under. We have a general Arizona revised statute. It lays out what the board can do for decisions. The last time I read it I thought we could modify Hearing Officer's decisions. It is on the Board of Adjustment page on the website, but I cannot access it. Just a general comment.

Chair Watson inaudible

Vice Chair Confer stated he is remembered a previous case but does not remember specifics.

Chair Watson stated given the stipulations by Mr. Abrahamson the board cannot make a modification this is an approval or appeal of the Hearing Officer's decision.

Board Member Palmer asked staff when the abatement would actually occur. Mr. Abrahamson stated that the applicant has a 14-day appeal period. Mr. Yocom stated in a regular abatement process the abatement would take place after 14 days. If the vote goes through tonight the city can immediately start working with our contractors. There is a scheduling time and things to line up it would possibly start in 1-2 weeks. Board Member Palmer stated her thought process was if the amount is based on the debris that was on site, if Mr. Gay had some time before the team gets out to the property and the price could be adjusted based on that.

Motion by Board Member Gans to deny the appeal of the Hearing Officer's decision to approve abatement request for the GAY RESIDENCE, located at 625 West 3rd Street: second by Board Member Naugle. Motion passed on **6-1** vote.

Ayes: Chair Watson, Board Members Palmer, Morrow, Naugle, Gans and Keagy

Nays: Vice Chair Confer

Abstain: None

Absent: None

3) **Staff Announcements:**

Mr. Abrahamson announced that there will not be a BOA Meeting in February. There are currently no cases.

4) **Adjourn**

Motion by Vice Chair Confer to adjourn meeting; second by Board Member Morrow. Motion passed on **7-0** vote.

Ayes: Chair Watson, Vice Chair Confer, Board Members Palmer, Morrow, Naugle, Gans and Keagy

Nays: None

Abstain: None

Absent: None

Hearing adjourned at 6:37 p.m.