

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