



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:

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

-
- 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.