



Minutes of the Board of Adjustment REGULAR MEETING January 24, 2024

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 John 'Jack' Confer	Jeff Tamulevich, Community Development Director
Vice Chair Kevin Morrow	Drew Yocom, Comm Enhancement Deputy Director
Board Member Kaelee Palmer	Michelle Dahlke, Principal Planner
Board Member Mary Foy	Lily Drosos, Planner II
Board Member Rickey Lynn Gans	Jennifer Daniels, Administrative Assistant II
Board Member Raun Keagy	
Board Member Brett Siegal (Alt)	

Meeting convened at 6:14 p.m. and was called to order by Chair Confer.

1) Voting of the Meeting Minutes:

Study Session & Formal Meeting Minutes from November 29, 2023.

Motion by Board Member Keagy to approve Meeting Minutes from Study Session and Regular Meeting November 29, 2023; second by Board Member Palmer. Motion passed on **6-0** vote.

Ayes: Chair Confer, Vice Chair Morrow, Board Members Keagy, Palmer, Foy and Siegal

Nays: None

Abstain: Board Member Gans

Absent: None

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- 2) Request to appeal the Hearing Officer's November 7, 2023, decision to approve the abatement request for **APPEAL – CASE CE230356**, located at 1895 East Hayden Lane. The appellant is Lane & Nach, P.C. (PL230368/CE230356)

Applicant Presentation:

Mr. Glen Kiley, the homeowner of 1895 East Hayden Lane gave a presentation. Chair Confer asked Mr. Kiley if his attorney was still representing him in this matter. Mr. Kiley stated he is now representing himself. Mr. Kiley stated the property is owned by his LLC. The property was acquired by Mr. Kiley on August 11, 2023. Mr. Kiley stated that the basis of the appeal tonight is that he received insufficient notice and insufficient time to address the code compliance issues. Mr. Kiely stated that he received the final correction notice on October 10th, and the letter was dated October 5th. He said the letter stated it was the final correction notice, but it was the only correction notice he received. He said the letter gave him 10 days to address the multiple code violations and that the violations were quite extensive. Mr. Kiley said that the site inspection occurred on October 19th and on November 7th the abatement hearing was

conducted. Mr. Kiely stated that it is unreasonable to expect all the violations to be corrected in 10 days. Mr. Kiely said that there were a number of violations given previously but they were given to the previous owner and that he was completely unaware of any violations until October 10th. He indicated that all violations have been addressed now. Mr. Kiely said that given sufficient notice and time, the abatement hearing would not have been required.

Chair Confer asked Mr. Kiely if he received notice of the Hearing Officer hearing. Mr. Kiley stated he did not receive an official notice; he spoke with Andres who stated it was on November 7th. Mr. Kiely stated he did not have anything in writing and planned on attending and got the days mixed up.

Mr. Kiley stated, being a previous property owner in Phoenix and there were some code violations due to landscaping, and that he was given 3 notices and 30 days to address the issue. He said that 10 days is a very unreasonable amount to address code violations. Mr. Kiely stated that the property had been issued notices since January 2023 but those were to the previous owner and Mr. Kiely had nothing to do with that. Mr. Kiely had possession since August 11th at a foreclosure auction. Mr. Kiely stated he was the lender and had to foreclose and that the property reverted to him at auction.

Board Member Palmer asked if Mr. Kiely lives in Australia, how did he find out about the notice and who receives the mail. Mr. Kiely stated it goes to a post office box. He indicated that he was in Arizona in October at the time he received the notice. Mr. Kiely stated he was here trying to resolve some of the issues. Mr. Kiley said that he did not know who the tenants were, if the property was vacant or the condition on the property. Board Member Palmer asked if the PO Box is regularly monitored. Mr. Kiely stated fairly regular, weekly when he is here.

Board Member Gans asked Mr. Kiley if the board was to grant the relief,, what his intentions were for the property and timeframe? Mr. Kiley stated it has been cleaned up now and that on December 7th, the tenant was removed. He said that they came to a mutual agreement and Mr. Kiely paid him to leave. On December 14th Mr. Kiely said he informed Code Compliance that the property was now in compliance.

Board Member Siegal asked Mr. Kiely who his listed statutory agent is for the LLC. Mr. Kiely stated it has changed a few times and is not sure. Board Member Siegal asked if Mr. Kiely knew if they had received notice of the violations or the hearing? Mr. Kiely stated he does not think they did.

Vice Chair Morrow asked if the intention is to lease the property to a new tenant, or is it currently occupied. Mr. Kiely stated he is trying to rehab it to a condition where he can lease it out to a new tenant and that it is currently not occupied.

Board Member Gans asked if the property has been cleaned up. Mr. Kiely stated, yes. Board Member Gans asked if Mr. Kiely brought any pictures for the board to see. Mr. Kiely stated that Andres was at the property today taking pictures.

Staff Presentation:

Ms. Lily Drosos, Planner II, Community Development gave a presentation. The case was initiated on January 17, 2023, for people using a RV as a livable dwelling, junk, debris, and inoperable/unregistered vehicles. Two complaints have been submitted to the Code Compliance Division, but multiple complaints have been filed with the Tempe Police Department. Three citations were issued. The property owner did not pay the fees and they were sent to collections.

Mr. Drew Yocom, Deputy Director, Community Enhancement gave the board additional details on events that took place on the property. Mr. Yocom stated that a Code Compliance inspector was on site today and confirmed the property was brought into compliance. We are still moving forward with the approval of the Hearing Officers decision for a 180-day open abatement, due to the public health and safety concerns that have transpired during the course of this case. This case was initiated in January 2023, for the first eight months we were dealing with a separate property owner. When ownership changed in August this was brought to our attention by Tempe Police Department due to criminal activity that was taking place. Once that was brought to our attention, we issued a new final notice of violation to the new property owner. Then after that we issued a notice of intent to abate to the property owner, that identified the hearing was going to take place on November 7th. On October 17th inspector Andres Reyes spoke with

Mr. Kiely on the phone explaining the process, violations on site and made the comments that were understood by the property owner that if it was brought into compliance prior to the November 7th Hearing Officer meeting, the Hearing Officer meeting would not have to take place. We reinspected the property again on October 23rd and found that no progress had been made. Another conversation with the property owner took place over the phone making the same comments that if the property is brought into compliance, we would not need to go to the Hearing Officer on November 7th. No progress was made so we proceeded with the hearing.

Board Member Palmer asked Mr. Yocom to explain how it works if property is brought into compliance to still have an open abatement, and if it just in case it goes back into non-compliance. Mr. Yocom stated that the reason they ask for an open 180-day abatement with some of these types of cases is because we want to make sure the property stays in compliance. Especially when there is a track record of so many violations as well as the concerns, we have with Tempe PD.

Board Member Gans asked if the board could hear what went on with Tempe PD. Mr. Yocom stated that he will only speak on the dates after ownership had changed. September 27, 2023, Tempe PD went to the property where multiple suspects were arrested, for changes involving weapons, illegal weapon possession, possession and sale of drugs, conducting fraudulent schemes to steal money from local victims using title loans, fraudulent vehicle titles, and fraudulent ID's created with stolen personal identifying information. On October 28, 2023, police were dispatched to the property again for attempted for sexual assault violation. On December 5, 2023, police were dispatched after receiving information that a suspect selling stolen items, including stolen auto parts was living out of the backyard of the property illegally. On December 6, 2023, Tempe PD and Tempe Fire had to respond to a fire that had broken out in the backyard.

Board Member Palmer asked if the board upholds the abatement, will the property owner not be charged unless the City goes out and abates the property. Mr. Yocom stated that is correct. At this time, we have no reason to go out to the property. There are no further penalties, violations, or fines. The approval of the 180-day abatement is just to help us insure for the next 6 months that the property does not fall back into non-compliance.

Chair Confer asked Mr. Yocom if there were fines or penalties that the homeowner has previously paid? Mr. Yocom stated that at this time the current property owner has not. The previous homeowner had received three civil citations.

Board Member Gans asked if this is to insure the property is going to stay cleaned up, but he will not be charged will not be charged with anything. Mr. Yocom stated that is correct as long as the property stays in compliance.

Board Member Keagy asked as a general understanding on the three citations that were issued, what does Tempe do now? Who is responsible to collect those fines? Mr. Yocom stated that the courts use a collection agency. If the fines were not paid by 30-60 days, then it will go to a collection agency to collect separately.

Board Member Siegal asked if notice was sent to the statutory agent? Mr. Yocom stated that no notice was sent to the statutory agent. We use the statutory agent when we issue citations or fines.

Chair Confer asked the board if there is a motion at this time. No motion was made.

Applicant Response:

Mr. Kiely stated that all details stated are correct. Mr. Kiely stated that he had to go through the legal process to remove the tenant. With the notice and eviction process, plus he had right of possession of his property for 21 days. In the end we came to a mutual agreement, which got him out faster. We paid him \$4,000 to go and take all of his belongings with him.

Chair Confer asked Mr. Kiely if he sees a deleterious effect for a 6-month open abatement on his property? Mr. Kiely stated that he was not completely aware of the legal process of what it entailed. He has no problem keeping the property clean for 180 days. There is no issue. It was more the process that it went through to get to the end point. Mr. Kiely believes he got more of the end result of the previous owner rather than given the full process and full

amount of time to work through the issues. Chair Confer stated he is happy to hear the property is cleaned up and taken care of today.

Public Comment:

None

Commission Discussion:

Motion by Board Member Palmer to deny the appeal of the Hearing Officer's November 7, 2023, decision to approve an abatement request for Appeal Case CE230356: second by Board Member Siegal. Motion passed on 7-0 vote.

Ayes: Chair Confer, Vice Chair Morrow, Board Members Keagy, Palmer, Foy, Gans and Siegal

Nays: None

Abstain: None

Absent: None

3) **Staff Announcements**

Board Member Keagy asked staff if we anticipate a BOA Meeting next month? Ms. Dahlke stated that at this time we do not anticipate a meeting in February.

Chair Confer welcomed new Board Member Foy.

4) **Adjourn**

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

Ayes: Chair Confer, Vice Chair Morrow, Board Members Keagy, Palmer, Foy, Gans and Siegal

Nays: None

Abstain: None

Absent: None

Hearing adjourned at 6:42 p.m.

Prepared by: Jennifer Daniels, Administrative Assistant II

Reviewed by: Michelle Dahlke, Principal Planner