

# MINUTES BOARD OF ADJUSTMENT FEBRUARY 26, 2020

Minutes of the regular hearing of the Board of Adjustment, of the City of Tempe, which was held at the Council Chambers, 31 East Fifth Street, Tempe, Arizona.

## Study Session 5:40 PM

Present:	Staff:
Chair David Lyon	Steve Abrahamson, Principal Planner
Vice Chair James Frazey	Robbie Aaron, Planner II
Board Member Richard Watson	Brittainy Nelson, Administrative Assistant
Board Member Whitney Baker	Jeff Tamulevich, Code Enforcement Manager
Board Member Kevin Cullens	Hector Heredia Jr, Code Inspector II
Board Member Raun Keagy	
Board Member John 'Jack' Confer	

- **Meeting Minutes**

Chair David Lyon asked if there were any corrections that the Board Members noticed.

Board Member Cullens stated that he was not at the January meeting. However, the minutes reflect that he was at the meeting. Board member Confer stated he was at the meeting however does not reflect his presence. Ms. Nelson stated that she will have to investigate this further and if they could continue the January meeting minutes till the next meeting so that she can revise them.

Ms. Nelson did go over who she shows as present for the October and November meetings and would be able to vote and who should abstain.

The Board Members asked why there are so many back logged Meeting Minutes.

Ms. Nelson informed them that she was not in the office most of October and not able to complete the meeting minutes for October there was not a December meeting and that January meeting was a Special Study Session there for no action items where on the agenda. February is the first meeting time to catch up all the meeting minutes.

- **VAN EGMOND PROPERTY**

Chair Lyon asked if there were any updates on this case.

Mr. Aaron stated that there is a possibility of the appellant asking for a continuance. However rather or not the continuance is granted is still up to the Board. He also informed that he did receive two emails the day before that he has proved to the Board. One is from the neighborhood chair and the other is from a neighbor they are in support of the abatement.

Chair Lyon asked if there are any questions on the abatement procedure.

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## **Regular Meeting 6:00 PM**

### **Present:**

### **Staff:**

Chair David Lyon	Steve Abrahamson, Principal Planner
Vice Chair James Frazey	Robbie Aaron, Planner I
Board Member Richard Watson	Brittainy Nelson, Administrative Assistant
Board Member Whitney Baker	Jeff Tamulevich, Code Enforcement Manager
Board Member Kevin Cullens	Hector Heredia Jr, Code Inspector II
Board Member Raun Keagy	
Board Member John 'Jack' Confer	

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

**Motion** by Vice Chair Frazey to approve the Study Session Meeting Minutes of October 23, 2019; second by Board Member Watson. Motion passed on 5-0 vote.

**Ayes:** David Lyon, James Frazey, Richard Watson, Kevin Cullens, Jack Confer

**Nays:** None

**Abstain:** Whitney Baker, Raun Keagy

**Absent:** None

**Motion** by Board Member Watson to approve the Regular Meeting Minutes of October 23, 2019; second by Vice Chair Frazey. Motion passed on 5-0 vote.

**Ayes:** David Lyon, James Frazey, Richard Watson, Kevin Cullens, Jack Confer

**Nays:** None

**Abstain:** Whitney Baker, Raun Keagy

**Absent:** None

**Motion** by Board Member Cullens to approve the Study Session Meeting Minutes of November 20, 2019; second by Board Member Baker. Motion passed on 4-0 vote.

**Ayes:** James Frazey, Kevin Cullens, Jack Confer, Whitney Baker

**Nays:** None

**Abstain:** David Lyon, Richard Watson, Raun Keagy

**Absent:** None

**Motion** by Board Member Baker to approve the Regular Meeting Minutes of November 20, 2019; second by Board Member Cullens. Motion passed on 5-0 vote.

**Ayes:** David Lyon, James Frazey, Kevin Cullens, Jack Confer, Whitney Baker

**Nays:** None

**Abstain:** Richard Watson, Raun Keagy

**Absent:** None

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- 2) Request an appeal of the December 17, 2019 Hearing Officer's decision to approve the abatement of public nuisance items for the **VAN EGMOND PROPERTY**, located at 1620 East Williams Street. The appellant is Warren Van Egmond. (PL190326 / CE190735)

Presentation from Applicant or Appellant's representative: Warren Van Egmond

Mr. Van Egmond informed the Board that he is a college professor. He believes that his yard is in complete compliance. He believes that the problem is in the code and how it is interpreted. He feels that his yard is keeping

with the new standards which the City Council has set up with the climate change and sustainability. As of last year, the City council adopted a new policy to reduce greenhouse gas. In order to promote growth of trees and other vegetation in the warmer temperatures. He informed the board that in the pamphlet it says "construction green infrastructure to cool our urban area. Adopting a forestry masterplan to expand the urban tree canopy and cultivating cool landscapes." That is the City Council commitment to the program in the City of Tempe. He is aware that the City Council can only commitment to City projects and City Property. There for it is up the Citizens to obtain these goals on their own property. He has been doing this for the past ten to twelve years. A far more sustainable and cooler yard. Unfortunately, the City Code is not looking at it in this way they are looking at the property in old eyes or old standards and trying to maintain yards as in the twenty century. Mr. Van Egmond then showed the Board several photos of yards in his neighborhood and compared them to his yard. He feels that many people have problem with his lawn because it looks as although everything is overgrown. However, his grass does fall below the 12 inches. The grass is this length because the more you cut it the less it grows. A lot of the cutting and mowing are done with the gas lawnmowers and the gas is the most polluting. The EPA stated that five percent of the CO2 pollution is being produced by lawnmowers. There was a fire about a year ago one of the bushes in one corner is completely burnt out. He is slowly repairing it and helping it to grow back. He feels there is nothing in the front yard that violates the section of the code. The Code does not have a limit on cultivated plants, and he keeps his plants and bushes trimmed below the windows on the house. His question to the City would be what the inspector wants to abate. He feels that the language that the Inspector uses is very general when answering the question. Mr. Egmond feels as though the inspector will come in and trim the houses down to look like all the other houses on his street. He is aware that his yard does not look like most of the other yards. If his neighbors do feel that it should be cut back a little bit, he is willing to do so. However, he wants to know what areas, plants and to what length. Another issue that has been raised is the Palm tree in the backyard which is not visible. Mr. Van Egmond then showed the Board Photos of the Palm trees on his property and the areas around his home. He then referenced the City Code Section 21-3b8 states, "a nuisance includes any one or more of the following conditions: Any landscaping visible from public property that is substantially dead, damaged or characterized uncontrolled growth, or presents a sum like appearance; uncultivated plants, weeds, tall grass, uncultivated shrubs or growth or otherwise higher than 12 inches. Any dead trees, bushes, shrubs, or portions thereof, including stumps; or any palm or similar type tree having dead or dry fronds descending downward from the base of the lowest living frond more than eight feet or dry fronds longer than five feet and closer than eight feet to the ground." Mr. Van Egmond then informed the Board that the things in the backyard are not stated and they are not visible. When the Code was first adopted it was then informed that they did not want to have the City Employees pecking in the backyard. When Mr. Van Egmond presented the case to the court, they did accept his argument about the front but not the palm tree. Mr. Van Egmond then appealed it to the Superior Court, but the inspector does not care about that even though the issue was determined by a higher court already. Three years ago another code inspector sited his palm tree and he meet the gentleman and the senior inspector at the time and presented his agreement and the city closed the case without doing an abatement and agreed that the palm tree was not in the scope of work to be done. Mr. Van Egmond then showed more photos of the palm trees from the back-yard view. He went on to inform the Board that in the first section of the Code it says it is to protect the residents from the physical visible and economic deterioration. It then goes on to list six things that apply to this and none of them refer to the palm tree. Mr. Van Egmond then informs the Board that the financial amount that it will cost to trim the palm tree. It is a very tall palm tree about 100 feet by now. Very thick and difficult to trim. Which will be a danger to workers climbing up. The job would be completed by power tools and the amount of CO2 that is produced will be considerable. The City already made a case of reducing the CO2 and in trimming the palm tree it will not be helping that matter. In summary he feels that this abatement is unnecessary; it goes against the act of what City Council wants to help reduce emissions. Mr. Van Egmond would like for the Board to leave the yard as it is.

Presentation by Staff, Robbie Aaron Planner I

Mr. Aaron informed the Board that this is a request for an abatement of the Van Egmond property appealing the December 17, 2019 Hearing Officers decision to allow the abatement on the property. He provided the Board with Site photos of the property taken by the Code Division. Staff has received two emails in opposition of the appeal and in support of the abatement of the property.

Chair Lyon asked the Board if they had any questions for Mr. Aaron.

Chair Lyon acknowledged Board Member Cullens.

Board Member Cullens asked for clarification on the statement that was made when Mr. Van Egmond went to court that they found in his favor expect for the palm tree. However, a Memo in the packet it states that on July 11, 2019 Mr. Van Egmond was found in responsible for the violation of the court system. So, in the packet there is no result of the court founding. Can someone please address what the court found?

Mr. Tamulevich stated that the results of the court hearing was that he was found responsible for the deteriorating landscaping. There was discussion about the palm tree and other items during the court session the fact of the matter was that he was found responsible at the end. He also informed the Board that the Court case is different than the abatement process. Mr. Tamulevich stated that the only thing in violation on the day of the presented case is the palm tree in the back. The items that Mr. Van Egmond spoke about at the beginning of his presentation are not a concern to the code compliance division. The only thing that would be abated would be the palm tree at this time.

Board Member Cullens asked if the amount in the packet is for everything it does not show just the palm tree.

Mr. Tamulevich stated that this is correct, and the price would be reduced to the work that was completed.

Vice Chair Frazey wanted to know when the decision was made to just include the back yard.

Mr. Tamulevich stated that this was done just this week. The grass in the front has been trimmed down to 12 inches or less. Code is aware that there is accent grass that is there as well. The overgrown shrubs are not in violation. Overgrown shrubs could become in violation when they obstruct the right of way.

#### Presentation by Staff, Hector Heredia Jr, Code Inspector II

Mr. Heredia Jr informed the Board that he has been a Code Inspector for seven years. He has visited the property recently and it is still in violation of overgrown palm ferns and is visible from multiple public access points. Any violations found during the abatement that was approved by the Hearing Officer will be addressed. As of today, City record and Maricopa County both identify the property owner as Mr. Van Egmond. Mr. Van Egmond has had ample time to bring the property into compliance. The violations were driven by public complaints against the property. When he first visited the property, he found deteriorated landscape in the front yard, dead palm ferns, and a camper in the front yard setback area. On February 14, 2019 there was no corrective action that had been taken and a final notice was issued. On March 6, 2019 an inspection found no correction action has been taken and he dropped off a business card to the property so the property owner can contact Mr. Heredia Jr with a plan of action. On March 8, 2019 Mr. Heredia Jr received an email from the property owner. At that time Mr. Heredia Jr. granted the property owner an extra 30 days to bring the property into compliance. On March 28, 2019 an inspection showed very little action has been taken he did wait till the extension period before moving forward with any other action. On April 4, 2019 Mr. Heredia Jr was advised by administration that two additional weeks have been granted until April 22, 2019 to Mr. Van Egmond that has directly emailed with expectations and deadlines from administration. Mr. Heredia Jr continued monitoring deadlines for the remainder of the time. On April 22, 2019 an inspection found no corrective action has had been taken and a final extension till Friday May 3, 2019 was advised to be the final effort to reach Mr. Van Egmond about taken responsibility. An inspection done on May 3, 2019 found no corrective action has been taken and a second final notice was mailed. On May 23, 2019 an inspection found no corrective action has been taken and a meeting with supervisor to discuss what actions taken moving forward. On May 28, 2019 an inspection found that no corrective action has been taken a citation was taken per City Code and the same violation outlined in all corrective notices. On May 31, 2019 received more online complaints about grass and weeds on the property. On June 11, 2019 there was a court hearing scheduled for July 11 at 2pm. On July 11, 2019 a court hearing found the property owner Mr. Van Egmond responsible for the violations found by the judge. A third final notice was issued allowing an additional two weeks before the abatement process was issued. On August 14, 2019 after a lengthy extension process due to a personal medical leave. Mr. Heredia Jr inspected the property and found no action has been taken. A fourth final notice was sent with a week extension. On August 23, 2019 an inspection

found that no corrective action was taken. Mr. Heredia Jr. received an email from Mr. Van Egmond stating that the case was up for review by the Superior Court. The City never received any certified mail or paperwork from the courts, so they continued with the process. August 28, 2019 an inspection found no corrective action was taken as well as no paperwork from the Superior Court about the appeal from Mr. Van Egmond. Mr. Heredia Jr did continue to wait for paperwork to be presented. On September 9, 2019 an inspection found no corrective action has been taken so he moved forward with the abatement submittal. On September 23, 2019 Mr. Heredia Jr meet with the abatements contractor to estimate the price and submitted for the next scheduled hearing officer on November 5, 2019. A notice of the hearing was posted to the property. On November 5, 2019 the case was postponed to the December Hearing Officer and an updated notice was posted. On December 17, 2019 the Hearing Officer approved the abatement after a 14-day appeal processing time. On December 31, 2019 the case was postponed for abatement because the property was to be heard by the Board of Adjustment on February 26, 2020. On February 26, 2020 there is no action taken on the final violation of the dead palm fern on the palm tree visible from multiple access points. The first case took 112 days to come into compliance and the current open case has taken 392 days and accounting. As of right now there have been 10 notices of violations, granted 7 extensions, and the city has well exceeded the normal amount of time for this case. City has offered all the assistance programs and granted the extensions in hopes that the property can come into compliance. Mr. Heredia Jr is hoping that the decision is upheld by the Board that the Hearing Officer made, and they can move forward with the process.

Chair Lyon asked the Board if they had any questions for City Staff.

Chair Lyon acknowledged Board Member Cullens.

Board Member Cullens stated that the documents and details that he provided to the Board was very helpful.

Chair Lyon acknowledged Vice Chair Frazey.

Vice Chair Frazey asked if the City be acted on the properties that Mr. Van Egmond has shown with similar palm trees in his area.

Mr. Heredia Jr stated no. That Code compliance does not actively look in the back yard of citizens unless a complaint is provided. Whereas with this case the violation was clearly visible from multiple access points.

#### **Public Comment:**

##### **Mr. Jerry– Tempe Resident**

He stated that he was also present at the court hearing and there was a ruling made at the court hearing, but it was not clear. The Staff to be implying that there are two people in favor of the abatement and no one in favor of the property the way it is. However, on the City website there are documentation showing that there are two letters that are for the property staying the way it is. He is in favor of the property staying the way that it is for the sustainability.

#### **Public Comments Closed**

Chair Lyon advised the appellant that they could come up and respond to the public comment.

Mr. Van Egmond stated that he would to summarize that from the very citation that he received he did try and get clarity. Because of his hearing he did ask for a meeting in the office so that he can hear clearly and be completely clear on what he needs to do. Mr. Heredi Jr refused to meet him in the office and he then took it to Mr. Tamulevich who also refused. He then took the complaint to Mr. Weaver and he never heard anything back until he received notice of the court date.

Mr. Aaron informed the Board that the two emails that he gave them were for this case and the other comments were from the Hearing Officer and where in the packet.

### Commission Discussion

Chair Lyon acknowledged Board Member Keagy.

Board Member Keagy stated that the question that was asked of what the violation was narrowed down to be the palm ferns. The palm ferns from his point of view are very visible from the right of way he has read the Ordinance and believes that they are in violation of the Ordinance. The court has ruled that Mr. Van Egmond is in violation.

Chair Lyon acknowledged Board Member Baker.

Board Member Baker stated that she agrees with Board Member Keagy. Her question is what the abatement amount will be for just the palm tree.

Mr. Tamulevich informed the Board that he does understand the concern. When the City receives their estimates from the contractors, they are looking at the entire scope of work. Unfortunately, he is not able to give a specific number, but it will not be more than what the estimate shows. He is aware however that the trimming of the palm tree is most of the estimate. The work in the front yard was very minor.

Chair Lyon acknowledged Board Member Cullens.

Board Member Cullens stated that he agrees with all the statements that have been made. And that when a motion is made that it goes forward with clarifying that the palm tree is the only thing getting abated.

Chair Lyon acknowledged Vice Chair Frazey.

Vice Chair Frazey stated that he agrees with Baker about the amount.

Chair Lyon stated that he agrees with everything he has heard and that the palm tree does need to be cleaned up.

Chair Lyon called for a motion:

Motion by Board Member Keagy to deny the appeal of the December 17, 2019 Hearing Officer's decision to approve the abatement of public nuisance items for the **VAN EGMOND PROPERTY**; second by Baker. Motion passed on 7-0 vote.

**Ayes:** David Lyon, James Frazey, Kevin Cullens, Jack Confer, Whitney Baker, Richard Watson, Raun Keagy

**Nays:** None

**Abstain:** None

**Absent:** None

Staff Mr. Abrahamson did not have any announcements.

Hearing adjourned at 7:22pm.

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Prepared by: Brittainy Nelson, Administrative Assistant  
Reviewed by:



Steve Abrahamson, Principal Planner

SA:bn