

Minutes of Meeting the Board of Appeals of the City of South Tucson, Arizona, held Wednesday, July 10, 2024, at 4:00 p.m., at the City of South Tucson City Hall Conference Room, 1601 S. 6th Avenue, South Tucson, Arizona.

Staff Present: Josue Licea, Planning and Zoning Director
 Danny Denogean, Public Safety Director
 Raul Navarro, Commander
 Michele Stinson, City Attorney
 Molly Leyba, Special Staff Assistant

BOA Members: Eliazar De La Cruz
 Johnathan Favela
 Elvia Sanchez (Not Present)
 Maria Len Tecson
 Diana Sears

Others Present: Corey Larsen, Appellant’s Attorney
 Fernando Duarte, Inspector

Mr. Licea: Thank you everybody for showing up today for this Board of Appeals Hearing, No. 24-02. I’m going to let the Chair of the Board of Appeals run the meeting from here in out.

I. CALL TO ORDER

Chair De La Cruz: This meeting is called to order.

II. PLEDGE OF ALLEGIANCE

Chair De La Cruz: We’re not going to say the Pledge of Allegiance. We don’t have a flag today so do you guys feel ok with that?

City Attorney Stinson: Do you guys just want to take a vote, a motion on not doing the Pledge of Allegiance?

Chair De La Cruz: Motion to not do Pledge of Allegiance.

Mrs. Sears: I’ll Second.

Board Members: Consensus.

III. ROLL CALL

Chair De La Cruz. Present.

Johnathan Favela. Present.

Elvia Sanchez. Not here.

Maria Len Tecson. Present.

Diana Sears. Present.

City Attorney Stinson: We have a quorum.

Mr. Licea: So, we have a quorum to continue this hearing. Do you want to start by mentioning the case, Chair?

IV. REGULAR SESSION AGENDA

1. On the petition of Dennis Luttrell, owner of the property at **425 E. Benson Hwy/Parcel 119-01-038B**, seeking to dismiss the **Notice of Violation 24-036** and required corrective actions citing code violations 7-13(A), (B), (E), (G2); 7-33(A), (B), (C1), (C2); and 7-34(B), Case Number Board of Appeals 24-02.

Chair De La Cruz read aloud the above Case No. 24-02.

Mr. Licea: I will just have to clarify the record for on the Notice of Violation, there was a minor error cited for the last violation noted, 7-34(B). This should actually be 7-34(C).

City Attorney Stinson: So, just to get us started here, the way that our Code basically lays this out is that first we are going to hear from the appellant and then we will hear from the City Staff. I think it would make sense for the Board to then be able to ask questions and then we can render a decision at that point. You guys are basically either going to affirm the Notice of Violation as it is, or you are going to reverse it, or you can modify it. In this situation as Josue just mentioned, it will probably need a slight modification as one of the citations is wrong, 7-34(B) should actually be 7-34(C). So, if we want to start off, we can start with the appellant.

Mr. Larson: Sure, I'd be happy to. I am Cory Larson, an attorney here, formerly with the law firm of Waterfall, Economidis, which now has a different name, which is Jennings, Haug, Keleher, McLeod, Waterfall. It's new, it's been a couple weeks, it's getting there. The gist of the complaint here, or the citation, is debris, and the basis of our appeal is simply this. One, there is debris on the ground, but it is not on this property that is cited. In fact, what we will show you if you don't have is an Inspection report dated yesterday from the Inspector, Fernando. So, he went out and inspected the property yesterday and no major debris found on site, it cites desert vegetation only. So, the nature of the alleged violation here is weeds and other things and then debris on it, so I think what we have as we sit here today is no debris found. It is one thing to cite a parking lot that has high weeds growing in it, but this is just a natural desert vegetation that has never been touched. There's no weeds here, it is just desert, and that's not a violation of our Code to have an area of natural desert within the boundaries of the City of South Tucson. I will note that we are in front of the Appeals Board here, but there's two different appeal matters, and the appeal was actually taken to the Code Official here. So, we got this notice, and we showed up here in good faith and we have pictures and ready to go forward. There's two different appeals cited in your Code and the appeal was made to the Code Official and I do note that we're not here in front of the Code Official, we're in front of the Board. So, I am not quite sure what's made that, but I'll mention this is not the nature of the appeal that was made. It should be in front of the Code Official, but we are in front of the Board, but to get this resolved, we get it resolved. I've already made an issue about technical over form, and I'm making it again, but I will mention that. So, consistent with Fernando Duarte's inspection report of which I have two extra copies here that I'll just leave on the table if you might want to look at it, whomever might want to look at them. What we have here is a situation where we are talking about only one parcel, although Mr. Luttrell and through his entities own several parcels here. Many of them, years ago, he owned more, and they have been sold to neighboring properties. I do understand the City of South Tucson is having some issues with those neighboring properties, the Spanish Trail Apartments and then the former Resort property. There's been fires, there's been citations. I believe there's a lawsuit about some

stuff going on over there, and the allegations in those lawsuits and in those claims are those properties are attracting a nuisance to the property. They have been seeing other things that have caused fires and whatnot, and I think what you will find is that Mr. Luttrell's property that's at issue, so we are specifically talking about the Spanish Trail Apartments being over here and the former Resort being here. We're talking about this parcel here. Eight point something acres, six point something acres, right over here being directly next to it.

Mr. Luttrell: About eight acres.

Mr. Larson: I think the allegations the City has already made is these neighboring properties are attracting vagrancy, attracting problems, the crime and other things that are being drawn to these properties, the allegations that the City is making is causing problems in this neighborhood, and Mr. Luttrell's property just happens to be next door. My point being, the City has already said, property owners here and here, you're causing the problem, and then we are trying to hold through the citation Mr. Luttrell responsible for something the City is already saying is being caused by these neighboring property owners. Now, what I can tell you is that from time-to-time illegal dumping does occur. I am not saying my client has anything to do with it, but illegal dumping is by its very nature, someone who is not authorized to be there dumping, and so back in March of this year, for instance, we can recognize the red hat, and even if you are not close enough to see it, over here, looking at some things that have been dumped on Mr. Luttrell's property. It has been back in March a homeless camp. We understand these things happen. The allegations are that the neighboring properties are causing some of these issues. And so, your Code says that Mr. Luttrell, even though he's not doing anything, he's not dumping this, he's not living in a vagrant situation, he's not allowing that to happen, but that is what is occurring. But what we can show you is photographs from yesterday. I understand Mr. Duarte's report, I didn't get the photographs, but his Inspection Report says there is no major debris, see photos for details. I assume there are photos that go with that, and I assume Mr. Duarte knows what he is talking about and that the photos attached will show no major issues. This is the property in the foreground, the Borderland property is in the background, no major issues going on consistent with what Mr. Duarte reported. And so again, an older picture here, but we will talk about the red area here and that's why in the background you see Borderland, they are back through here. So, the photographs taken yesterday show the area cleaned up. Some taken today do show across the street where other adjacent properties where you do have the issues of other things that are not on the property we are talking about, it's not on Mr. Luttrell's property. We don't disagree that the City wants a relatively clean and neat area, to be able to have that, but we do object to the City specifically saying neighboring properties, you're causing and drawing in these issues, then trying to have Mr. Luttrell be responsible for what other property owners are being alleged to have caused and drawn in. We have cleaned up the area. That's what Mr. Duarte says. One of the other things I will note is that the citation says that one of the directives here is that Mr. Luttrell should put a fence around his property, so we went ahead and had that quoted out, so we have an understanding of what is being involved there. It's about going around a circle of eight acres is approximately $\frac{1}{2}$ mile, it's about 3,200 linear feet of a fence, an average of what was quoted would be \$485,000, to put in a fence.

Mrs. Sears: How much?

Mr. Larson: \$485,000, approximately half a million dollars to put in a fence, so we weigh the issues that's going on here, neighboring properties are causing an issue in the local area, again, according to the City's own allegations. There is illegal dumping, but Mr. Luttrell cleans that out when that happens, but you can't require somebody to spend \$500,000, but even then, one of the issues is that there are parts of this property adjacent that are fenced off, so Mr. Luttrell has some pictures in here which you will see where it's been cut where

necessary, where someone comes through. So, he could spend half a million dollars in putting this fence up and what I think we have is some photographs showing is the culture is just going to cut into this. We found an angle grinder and some things on the ground around where the fence was cut. Spending half a million dollars isn't going to solve the problem. So, let me tell you on a side issue that doesn't really have much to do with this, but it does, which is the Borderland, where here there has been significant discussion about selling this property to them. Again, they own the property to the north and would like to expand to the south because right now this property, let's face it, it is native desert, it hasn't been doing much economic good to anybody, Mr. Luttrell pays his taxes. If nothing much happens on this property, and the cynical person would say nothing good happens on this property, Borderland is interested in it, and this hearing today is a hold up in that process. We would like to have this dismissed. We would like to sell this property to Borderland. We would like them not to use whatever happens here today as a reason to try to pay significantly less for it, we want them to pay a fair price for them to expand their operations and therefore improve the property of debris and pay more sales tax to the City when they do. This is holding that up. I understand you don't know that. It's not necessarily pertinent to the issue of is there is debris or not, but I do think that we are taking a step back and looking long-term at what's good for the City of South Tucson. It's having a good partner like Borderland that has already been good to this community, provides jobs, pays their taxes and is building Tucson and South Tucson and Pima County and Southern Arizona. Have them expand here and make good use of this property. Frankly, all of us should try to get out of their way and allow that to happen. We ask that this case be dismissed. You don't have to believe us. You can believe Mr. Duarte, that the property is clean as of now, but putting a fence around it, you can't compel someone to pay half a million dollars to do it. It's not a good idea anyway. Let's just get this dismissed, move on and hopefully get a deal so Borderland make productive use of this facility and for the betterment of South Tucson in short term. Any questions I can answer for anybody?

Mr. Licea: I would like to make a statement here. I appreciate your side of it, as well as Mr. Duarte's report, but we will go ahead and add that some of the problems we are encountering here are actually because of the vegetation, desert landscape, and that is what we originally called for, cleanup of the desert landscape. What's been happening there over the years, not just recently, seriously, over the years, there are a lot of issues going between this property and the adjacent property, back and forth what have you, and this vegetation here allows people a place to hang out and hide out. PD goes in there regularly. You can't see people because of the high vegetation. We've got some statements also and some police reports about a lot of activity that has happened on this property, namely, one of the most important ones that has been cited is that there was a fire, some brush fires, on Mr. Luttrell's property on the day leading up to the big Spanish Trail fire. It cannot be confirmed but obviously, a normal person would think that hey, these fires were started by somebody on Mr. Luttrell's property and then went over and started something at the Spanish Trail property. We have not been able to confirm that but that is something that is easy to connect in a way, although we don't have any hard evidence of that. We've got some reports here, and I'll let Mr. Navarro who has been the lead in putting these reports together to cite some of this activity that has been cited on this property in the past leading up to this hearing here. And to also mention too, we do have some video evidence of when City officials went out to this property and spoke to Mr. Luttrell, Ms. Rita Rogers was present also, and at that point there were several excavations on site, a lot of debris. Since then, I understand it has been cleaned up, the debris, and excavations have been filled in; however, the vegetation has not been cleaned up. At that point, there was some conversations with Mr. Luttrell, although where it was not very explicit question, he did

accept responsibility for the conditions on site. He did mention he had the means to clean up the site, so we've got that evidence also and we would like to bring that into play here. Mr. Navarro.

Mr. Larson: I'm sorry, just before you move on, you said you wanted to ask a question that was sort of an issue, so 7-13(A) Cumulation, does talk about the amount of grass, 6 inches in height, weeds higher than six, dead plants or dead parts of any plants or trees along sidewalks that hang over adjoining properties or sidewalks. When we're talking about natural desert landscaping like I think we are, I don't think we are within the statute where we can say, hey, natural desert landscape with scrub brush and greasewood and things we have in the natural desert allows things to happen that we can't see, which makes it harder on the Police Department, which I am sorry about, that is a different issue, but that isn't an issue of a few weeds or vegetation prohibited. The debris is one thing, whereas illegal dumping includes stuff. We would like not to have illegal dumping, we would like people to be responsible for their own refuse, but that's not the world we live in. But as far as the vegetation, the fact that it's natural desert and that allows people to hide there, I'm sorry, that's not a Code Enforcement issue.

City Attorney Stinson: I just want to real quick.

Mr. Larson: Please.

City Attorney Stinson: I will go ahead and put it out there. Weeds is actually defined in our Code, it includes but is not limited to indented or uncultivated plants, invasive plants, aggressively seeding plants, brush and thistle, ragweed, plants generated accepted as having no value and frequently of uncontrolled growth. So, it is just important that we have the definition right.

Mr. Larson: Fair enough, but it's also a common-sense word, we know what weeds mean. Sorry, Mr. Navarro.

Mr. Navarro: I am Commander Navarro of the City of South Tucson Police Department. I have not been made aware of Inspector Duarte's reports. I was on the property as of yesterday walking in as because of the rain and everything that had occurred, obviously things are growing. I actually went into the property, not just go around the property, and found several evidences of homeless encampment. I call them homeless; you can use the word houseless, but they are encampments. There is a lot of debris, a lot of garbage. I went in there and I still saw plenty of evidence of litter all over the place, whether it was illegal dumping, trespassing, however it goes, plenty of signs of that, and that was as of yesterday. But I am not here to contradict Inspector Duarte, I actually went in yesterday about 1:00, 2:00. I don't know; however, vegetation is high. Now, as far as what I can tell you is yes, there is no doubt that the neighboring location has been an issue and we have addressed that with a lawsuit. This location is still a point of police resources and fire department resources that are continuously getting pulled because of the activity that occurs there. That bothers not just those neighbors but good neighbors like Borderland. They have had burglaries next door that we can contribute to people on Mr. Luttrell's property. In addition, this property is often used as a gateway between the City of South Tucson and the City of Tucson, because if you go underneath the bridge, it leads right over to the Meeks Motel which goes over to Park and Benson area. A lot of people like to travel back and forth, so it's a common ground crossing area. The place, in my opinion, has not been thoroughly cleaned, the vegetation which hides illegal activities. Did anybody have any questions over here.

City Attorney Stinson: Let's go through and read our Code, it kind of lays it out. You kind of put on your, let's have the City finish our side and then we can open it up to some questions.

Mr. Navarro: So, that is what I have seen, and the question was just asked if I have pictures from yesterday. No, I didn't get pictures from yesterday. I can easily get them. I can actually live stream them to you right now if you would like. I can go drive down there and live stream them to you face time if you really want. It's not that difficult for me to do. So, in my opinion, the area is not clean, is not safe, it attracts criminal element, and it needs to be cleaned up and secured for the public safety of the City of South Tucson.

Mr. Larson: Do you think anything bad would happen with the property with Borderland taking it over and expanding it?

Mr. Navarro: Absolutely not, as long as it is cleared out. If Borderland wants to take it, I'll be completely honest with you, it would be more tax revenue, it would be better. We actually had this discussion back in January with Mr. Luttrell. Mr. Luttrell said he has been in those conversations for years in the past. He is not moving on it, so however long it is going to take him. That is my opinion.

Mr. Larson: I've got a purchase contract just waiting on this here.

Mr. Licea: I think we are done on our end, aren't we?

City Attorney Stinson: You want to watch the video?

Mr. Licea: So, the video is an interaction of what happened on the site in mid-February, you know, where they was the homeless encampments, excavations, and you can see a lot of the debris, but specifically, some of the times we have noted here, Mr. Luttrell did acknowledge that it was an issue. He did admit that he wanted to clean it up. So, we can play it if you would like.

Mrs. Sears: What year was that video done?

Mr. Licea: This year.

Mr. Larson: From January 29th, I believe.

Mrs. Sears: Of this year?

Mr. Licea: January 29th, sorry.

Mrs. Sears: I have a couple questions. When you bought this property, did you buy it just like that?

Mr. Luttrell: Yes, it's been like that for over 20 years. It used to belong to the City of South Tucson. It used to be in trust with the City of South Tucson about 23 years ago, and coincidentally when I bought the property short after, the City of South Tucson with their back loader just dumped with their big truck of garbage on it.

Mrs. Sears: Who did that?

Mr. Luttrell: The City of South Tucson.

Mrs. Sears: The City of South Tucson?

Mr. Luttrell: Yeah.

Mr. Larson: Twenty-five years ago.

Mr. Luttrell: Yeah, 25. So, anyhow, no, it's been like this for at least 20 years.

Mrs. Sears: So, is it desert?

Mr. Luttrell: Yes, it's desert.

Mrs. Sears: Always been desert?

Mr. Luttrell: Yes, it has, and I think I have had about two or three complaints in over 20 years.

Mrs. Sears: How long has the City of South Tucson been approaching you about cleaning it up?

Mr. Luttrell: The last time they approached me was when Josue, we talked, and we met out there. There was a time,

Mrs. Sears: Would you say in the past two years?

Mr. Luttrell: Yeah.

Mrs. Sears: But it's an issue now, all of a sudden?

Mr. Luttrell: Yes.

Mrs. Sears: Yes?

Mr. Larson: Just to be clear with Mr. Luttrell, he did in the past own the Spanish Trial Apartments and the old Resort. He sold those five years ago now?

Mr. Luttrell: 2018.

Mr. Larson: 2018, five or six years ago, and there weren't complaints on those when he owned them. There have been with the new owners that have been in the last couple of years, and that's also kind of been spreading on to the one property. The only property which we are talking about is this property right here.

Chair De La Cruz: How come there has never been a fence?

Mr. Luttrell: Well, I don't know, one thing, a fence is, for example, these here are some fence posts that I had on the property and there is a cut off wheel that was left with it, and there was another one. This was fencing in about by 100x100 yards. I think a post still stands, but to take a post out, it takes about one minute. Here is a cutoff I found that was laying there.

Mrs. Sears: How long ago was that?

Mr. Luttrell: This was about three weeks ago, somebody cut down a fence.

Mrs. Sears: So, there was a fence?

Mr. Larson: There was a fence on a portion of the property.

Chair De La Cruz: How long have you owned it?

Mr. Larson: 25-30 years.

Mr. Favela: How come there's never been a fence in 25 years? That's just my question.

Mr. Luttrell: Well, it's just like that all over town, there's properties that are that, there's no reason to have to secure it.

Mr. Favela: I would say in the last two years or more, there's more homeless going by.

Mr. Larson: Yeah, there was a lot of them when the City came out.

Mr. Luttrell: And we got rid of all of them. We go twice a day or once a day and we go over the whole perimeter of the property and if there is somebody starting to camp out, starting to come, stuff like that, we give them oral notice to move. That will usually work after the second notice or we will call the police, but then they have moved out. There's no homeless there now and there haven't been there now for probably a month, a month and a half, and the other thing was, we did have problems with dumping on the property. Now, I understand that it is illegal to dump on the property, yet I am responsible. I understand that, so twice, three times a week or daily, we go through and if there is something on the parcel that is trash or something like that, we load it up in our truck and when we get a full load, we take it to the dump. So that takes care of illegal dumping because we are right away, we are right on time, and we get rid of it just as it happens.

Mr. Larson: There is one other point to make to your point, too, is I think also goes with what the Commander was talking about, is there is a thin strip of land that goes between the parcel in issue, and the old Resort parcel, owned by the State of Arizona. It then goes down and goes underneath to the Meeks Hotel. It's down over here. You can walk under this underpass. This is all State of Arizona land right here, so I've kind of done that on this. You can pass that around and see that blued in area, but we can't do anything about that area. It's owned by the State, so as far as Commander Navarro was talking about, people walking between South Tucson and Tucson going under this underpass and going up through the property, we're actually talking about state land that we couldn't fence in if we wanted to. You couldn't stop those people if you wanted to. Mr. Luttrell couldn't. City of South Tucson couldn't do anything about it because it's state land that goes under the underpass and provides that walkway, so even if there was a fence, there would still be a thoroughfare through there for which Commander Navarro was talking about being a problematic area.

Mr. Licea: I personally don't think that is correct. That's an easement for the railroad. You could certainly put a fence around the perimeter of the property.

Mr. Larson: You try fighting the railroads, man. That's the state's problem.

Mr. Licea: You could certainly put a fence around your property, you certainly can, to keep people off of it.

Mr. Larson: No, I'm saying there's still a strip of land that goes up between the properties. You can see on the parcel maps.

Mr. Licea: I understand that, but when there is a fence, usually the state requires access. That's all they want so when somebody puts a fence up against that property, or up against an easement, all they require is a gate.

Mr. Larson: It's not an easement.

Mr. Licea: Well, whatever it may be.

Mr. Larson: It's very different. I am a property specialist lawyer, and an easement is one thing. An easement, you own the property but someone else has access rights across it. This is actually a property line. We don't own that property. The State of Arizona owns it. You cannot put a fence on someone else's property.

Mr. Licea: You wouldn't put it on their property, you would put it on your property boundary as long as they have access to it, you could put a property fence on there.

Mr. Larson: You can't stop the State. You can't stop the State.

Mr. Licea: Correct.

Mr. Favela: So, this little strip, the State owns?

Mr. Licea: Yes.

Mr. Luttrell: Next to the freeway.

Mr. Larson: It's a very weirdly shaped parcel. Then it goes down underneath that underpass like Commander Navarro was talking about.

Mrs. Sears: I also want to say, when I received an email about this property being in violation, I've been in the City of South Tucson for 25 years now, and I thought it was a nuisance to the site until I actually got to it, and I was like, oh, this is way behind the (inaudible), the desert shrubbery, but I still went ahead and drove the whole property, me and my husband did, in the truck. We saw no visible signs of tents, there was no trash, because I even told Dennis if it's trashy, you are in violation. We went through the whole circular. We saw what you are talking about, the underpass, we had seen tents, we had seen garbage, we saw one area where a fire had been started but can't really do much about that. So that's why I was asking, when he first bought it, if he bought it just like that, desert-y, how is it now a violation.

Mr. Larson: It's always been that way, yeah.

Mrs. Sears: So that is why I am asking you guys, how is it now a violation if he bought it as a desert.

Mr. Licea: It's from all the trespassing that is going on to the private property and causing problems from this and going on to the neighboring properties. So again, we have people camping out here, doing drugs, what have you, whatever they do, they go from this property to the next, start fires, and again, that is how we believe some of these other fires next door happened. So yeah, we have this video proof if you would like to see it. If you have not seen some of this proof, we can actually start showing you some of this whole video.

Mr. Larson: I get it folks. One of the things, a weird story here, but my daughter plays softball in Tucson, so I find myself talking with the other boards in town that run softball leagues around the City and Southern Arizona, and so, we are talking about what our problems are and what the league has to do. The biggest complaint anybody has, north, south, east, west Tucson is this. It has become a problem. We are concerned about the safety at parks, City parks, at this park, at whatever park, every park, north, south, east, west across town. We are concerned about that. We don't, some fields we don't let the girls go without parents with them. A parent has to walk them all the way there. Why? Because every place across town is having a problem with homeless folks. It's all the way through town. This is not a Dennis Luttrell problem; this is not a City of South Tucson problem. It's not even a southern Arizona problem. This is a nationwide problem. Maybe it is worse western United States, but I can tell you it's all around town, every part of town, South Tucson is not any different. This property is not any different. If there is a space to camp, I mean, you've driven down Aviation Highway, and I know you have because to get where you are going, and you see all the camps and all of the things there, and bigger than ever, then the next day they are gone, and the next day they are back again. You can show a picture of any given day where you have a bunch of people decide to

walk across the train tracks because they are leaving from one place, and they are going to be here. You can't pick one area for a day and say hey, they just moved in. This stuff happens. It's part of our social fabric right now. Yeah, maybe something should be done about it, but it's not to say you one landowner, you are going to be responsible for this nationwide problem that's happening in all parts of town. It's litter in the underpasses. It's affecting all our parks that our young women are playing softball at, and all our little league parks where our little guys are playing baseball at. It's all over, it's not a Dennis Luttrell problem.

Mr. Licea: I want to state for the record that the City is not going after this property owner specifically. The City has recently issued two lawsuits against the property owner adjacent to this and who happens to be the property owner at a hotel that is less than half a mile across this (inaudible), so we are not solely going after Mr. Luttrell, and just for the record I am going to put this here.

Mr. Larson: I completely agree with you. That's kind of my point is that yes, these other neighboring property owners are problematic to the City of South Tucson, clearly is attracting problems. Unfortunately, Mr. Luttrell's property is in between these.

Mr. Licea: I am going to start the video.

Mrs. Sears: And this was how long ago?

Mr. Licea: In January.

Mrs. Sears: In January?

Video Recording Started

Ms. Stinson: I want to make sure we get the question for the record. What was the question?

Mrs. Sears: I asked if he was just there yesterday, is all that stuff still there or is it gone?

Mr. Navarro: You currently have debris; there is no question about it. You have some broken concrete there that could be a trip hazard. There is debris there, there is sufficient excess of weeds in excess of six inches. So, there are violations, if I were to cite Mr. Luttrell in court, and if found responsible we would have review hearings and it would be up to myself and the prosecuting attorney to determine whether they have abated those violations. So, if you are talking other violations, yes, to what extent, it's an improvement compared to what it used to be for this current violation, yes. We can ask the inspector here, Mr. Duarte.

Mrs. Sears: I would like to address some of this vegetation because yesterday when I drove it, it was like this, like any other unimproved desert, and I mean, I'm not a fire expert or anything, but I think the City could help Mr. Luttrell in controlled fire. I mean, if that is so important that the City has it all cleared out, there is such a thing as the City of South Tucson helping them with a controlled fire. It brings funds into the City, and it helps in training the Fire Department. Did the City think about that?

Mr. Favela: Is it a nuisance for the Police Department to come here every so often?

Mr. Navarro: Sir, if you are asking me if it is a nuisance, 100%. As far as having the City of South Tucson taking care of somebody's property, I'm going to ask each and every one of you, how many city officials, how many city employees, come onto your property and clean up. None. It is not the City's responsibility to take care of other people's property. It is incumbent and onus of the owner. It is on them to make sure the property is in compliance and doesn't create a public hazard. Under a criminal offense, I could issue him a citation. We

have decided, the attorney shakes his head no. (Multiple people talking simultaneously.) I've been doing this job for 25 years and I have probable cause to issue him a citation. Whether I win or not, that's different. I do have probable cause to issue him a citation, ok. He is a Counselor, he can disagree all wants, that's his right, that's his job. I commend him for his job. That is what he is here for. Now, this location is a public nuisance, in my opinion. We have decided as a City to invoke a civil matter, a little bit more than not. That's what it is, it tips the scale. It's not beyond a reasonable doubt, it is a preponderance of the evidence. It's whether you need to show a little bit more to show, yes, he's in violation, that is what a civil trial is, ok. Your question to me, is it a nuisance? Yes. Mrs. Sears, you're asking whether the City can step in, it is not the City's responsibility to do it.

Mrs. Sears: All I simply said, and let me clarify it, in any other area, I know that there are funds that our City could apply for and it would be a controlled fire where our own Fire Department gets funds and some type of a grant to not only train for our Fire Department but bring other maybe newbies to come in and do a controlled fire. I mean, it's been like this for 25 years.

Mr. Navarro: And I understand the question, and if you let the video play, you will hear Mr. Luttrell saying he had the means to take care of the property. So, if he has the means, then why wouldn't he take care of the property?

Mrs. Sears: But hasn't he cleared it all up?

Mr. Navarro: No.

Mrs. Sears: Yes. I drove it a month and a half ago before any of this, and I clearly saw one burned patch, a person walking around that little street that is around there. I didn't see any camps, and this was on a weekend.

City Attorney Stinson: I'd like us to kind of stick to the evidence that is being presented to you today, and just try being objective of both sides that are putting forward evidence and kind of put on that hat, and then we can continue to play the video. I think we kind of paused here.

Mr. Licea: Do you want to continue watching the video?

Mr. Larson: Pardon me for interrupting, Commander Navarro, but I'll raise my point here which is if what he was saying, I could cite somebody, it's a violation, you know, it's kind of like a drunk driver careens off the road and takes out your wall and runs into your house with his car, these things happen. An officer showing up at the scene and saying, geez, homeowner, I'm going to cite you because someone else did something illegal and bad to your property, you are now in violation. You supposed to have a wall put up around this; you're supposed to have a wall or whatever, and you are just sitting there going, a drunk driver just ran into my house, man, I'm not criminally liable for that. I use the term nuisance, but it is a factual nuisance. You have to, a property owner can be liable if they create a situation which invites people in, you know, if you have a huge slide on your property and don't put a fence around it, guarantee the neighboring kids are going to wander around and say, hey, that looks like a fun slide, let's go out there at midnight and they go down it and someone gets hurt, you're liable. You didn't attract it. The evidence presented is for the same kind of desert landscape for 25 years. It's a social situation and it's been neighboring properties that are bringing in the criminal element and bringing a homeless encampment into area and it's not for this property.

City Attorney Stinson: I just want to interject again. We do have a definition of public nuisance under our Code. I won't read the whole thing but basically it is anything that is injurious to public health and safety or is indecent or offensive to the senses. So, it is a broader definition.

Mr. Larson: So, you say natural desert landscape is offensive to the senses, then I suggest we live in the wrong place.

Mr. Licea: I will say this. I feel that part of the problem here again is the vegetation, and you did call it an attractive nuisance, and this vegetation attracts -

Mr. Larson: What I called it was not an attractive nuisance.

Mr. Licea: Well, I will say it is, because that is exactly what attracts folks that hide behind the vegetation and camp there.

Mr. Favela: So, what is going to stop homelessness here, and trash? That's the violation, right? We're having fires, homeless and trash.

Mrs. Sears: It is a violation.

Mr. Favela: How do we stop all that.

City Attorney Stinson: So, I can walk through a couple violations that are in the notice. So, a cumulation of vegetation, an accumulation of refuse, insects, rodents, illegal dumping on other properties, litter, and then basically the 7-34 which the City is saying should be modified to 7-34 (C) is basically knowingly maintaining a public nuisance.

Mrs. Sears: So, what is the cure?

Mr. Licea: The cure would be to have all this land bladed or fenced out.

Mr. Larson: We can't, it's too close to the freeway.

Mrs. Sears: So, you want him to clear out all the desert?

Mr. Licea: Yes.

Mrs. Sears: How?

Mr. Licea: With a big tractor, Caterpillar.

Mrs. Sears: And wouldn't that cause dust and environment -

Mr. Licea: Water trucks spray it down while they are doing it.

Mrs. Sears: Or fence it?

Male Public Member: Why can't you fence it?

Mr. Larson: It's half a million bucks.

Male Public Member: No, why can't you fence it, you were saying?

Mr. Larson: You can't clear it, it is too close to the freeway. You guys, South Tucson, could be sued by ADOT for dust. You would have to have a water truck out there.

Male Public Member: No, no, a fence.

Mr. Larson: It's part of an easement.

City Attorney Stinson: Sir, I don't know, you're just part of the public, right, you're just observing? We're not -

Male Public Member: I saw him talking to him, I'm sorry.

Mr. Favela: What stops a fence?

City Attorney Stinson: I don't think the City would force what type of fence, any type of fence that would be to block.

Mrs. Sears: Like temporary, like American Fence or -

Mr. Favela: I have property and I have to put a fence up because of that, but that was easier for me, right, so what is going to stop this problem, either a fence or selling it? If he is going to sell it, what is Borderland going to do with it? If he is not going to sell it, he should put a fence up.

Mr. Larson: You can't force him to put a fence up.

Mr. Favela: If we can't force you, then what can we do?

Mrs. Sears: He just said he has to cut off all that desert. I have property in South Tucson, and I have fenced it I don't know how many times, but the poles have been hit by cars, they've been stolen, I've had wires that have been cut, and it's all I can do to keep my property secure.

Mr. Favela: You can't prevent homelessness from coming in, trash, it's always going to be there.

Mrs. Sears: My business fence has been cut and I have to go in and repair it as well.

Mr. Favela: But what can deter it, what's the solution?

Mr. Larson: Well, on one sense there is a social safety net of, it's a different story of what prevents homelessness, but I don't believe we are going to solve that problem at this hearing today.

Mr. Favela: No, I'm not saying to solve homelessness, homelessness there.

Mr. Larson: It's on neighboring properties, I agree with that, too, to stop having a criminal element that is drawn to that area, and why has this come up in the last couple of years, not years before. Again, you're suing the right parties to have them to stop attracting folks of the criminal elements to and around this property, but I think the worst thing is I have purchase stuff on my desk that I can't get signed because of this hearing, Borderland, consequently, the date of the contract is unsigned at this moment because we have been back and forth. There is no signing, there is a prepared contract exchange between lawyers, but it is not signed. To be honest with you, that is just a fact. They have made a proposal to purchase and want to extend their property onto this approximately seven to eight acres, approximately.

Ms. Sears: And they're not doing it because of the violation?

Mr. Larson: I think they are waiting to see if they can have an advantage.

Mr. Favela: What would be the advantage if he gets a violation?

Mr. Larson: Oh, let's lower our purchase price, they would take it for less because you're in some problems with the City of South Tucson rather than just -

Mr. Favela: So, you are, what kind of attorney are you?

Mr. Larson: Real estate attorney.

Mr. Favela: You can't argue with them and say, hey, there's no difference.

Mr. Larson: I wanted to, I tried to get them to sign before this, but -

City Attorney Stinson: We want to keep, the nature of this appeal is very narrow. What the Board is really trying to consider here is if there are substantive areas in the notice of violation, or if what the City is asking the property owner to do is unreasonable. So those are the two things. We understand that there are other things in this world that are of course in the back of everyone's mind. We've got issues on neighboring properties. We've got homelessness, we've got all those things, and maybe a contract that is waiting out there, but we really need to make sure that we are narrowing in on the scope of what we are considering today, ok. This is more of a form kind of issue that I want to make sure that you guys are limited in what you are considering here.

Chair De La Cruz: So, I do have a question, then. So, that property has been like that you said for 25 years, right?

Mr. Larson: Yes.

Chair De La Cruz: So, have you trimmed those in 25 years, or has it just grown like that?

Mr. Luttrell: We have trimmed some of the trees back, but most of it has been like that. Yeah, you had a picture of that off 4th Avenue that was trimmed up there.

Chair De La Cruz: Yeah, I mean, if you were to trim them, you lose that place where they can hide, I mean, the bushes are all down.

Mr. Luttrell: Let me answer that. There were some homeless people on there when I met the City out there. Every one of those homeless sites, we started on them right away. Every one of those homeless sites is gone now, and what we do is once a day, sometimes two times a day, we take a vehicle, and we seem to circle around the property. We go through that circle looking for somebody starting a camp or etcetera, and if we see somebody, we let them know right away that day that they need to get off the property because of the City Code. And it's been working so far real good, and also what we do when

Mr. Larson: We can't really throw somebody off; we're not talking about breach of the peace here.

Mrs. Sears: It's trespassing.

Mr. Larson: And I think Commander Navarro here will agree, a little bit of bum's rush is not a good idea, don't do that.

Commander Navarro: Not physical, but you can tell people to leave, and you can call 9-1-1 to get them off the property.

Mr. Larson: And that's what we have done.

Mr. Luttrell: And the same thing, I would say probably I'm looking at it, probably somebody we catch with a dumpster probably for a week or so, and I've hired people to help me out at about \$5 or \$6,000 to clean up the property. There's other people, myself and Rita, we see a sofa or something out there, we get the pickup truck and we load it up and push it out there and we hand pick up a lot of trash. There might be a half percent or percent of what was there, I mean, but we did clean the property up, and I noticed that actually the vegetation, I noticed that the citation was for to put up a fence to get rid of illegal dumping. That's what it was for. That citation wasn't for anything else. It wasn't for homeless camps or anything like that. It was stated in there that to eliminate illegal dumping, which I understand by the Code, it's illegal to dump on the property but the owner is responsible for it. So, I am being responsible now. Every time I see something on there, I try to catch people when I can, every time I see something on there, I go up and take my pickup truck and I take it down to Los Reales landfill and clean it up until it gets done. I think if you look the property over, there was some sofas and some other things, stuff like that. Those are all gone, and the homeless camps are gone, they've been gone now for about a month, month and a half. We leveled it off and cleaned it up. So, I figured, and like the Commander said, he asked if I could do it and I did say I could do it, and those are the things I did, and he had asked if me if I could put a fence up or anything like that because I wouldn't be able to afford to put a fence up. So, I have done everything I can to be responsible and I accept responsibility for dumping, although it's a criminal act against me and let's hope that if the Police Department sees somebody, they cite them, but I clean up and negate that stuff, and I'm trying to be a good citizen, and I think if there is some trimming up or something like that, but as I showed earlier, the property is right across the street and they've been there for 25-30 years. They look just like my property. I have pictures of them, so I think basically, one of the things the City told me was they had to get on my butt because they got on Spanish Trail's butt. I've taken care of it, I'm not responsible for them. Their fences are all cut. Like I said, fences don't hold anybody back.

Mr. Larson: And it would be half a million-dollar expense.

Mr. Luttrell: True. We have people cut through it and things like that, so I try to cooperate, I want to cooperate, but I think I have abated all the nuisances and made the property a better, clean place, and you know, there were some pictures, you saw pictures in front of the property. That's what people see when they go down 4th Avenue and the down pictures. They're just like the ten acres that are on the side of the street. Vegetation looks the same and I think just because of some problems the City is having with Spanish Trail Apartments, they are leaning on me about it. Like I said, there is a great improvement and I think if I could drive you people by that you would see this picture. Thank you.

Mr. Duarte: Can I add something just really quick? If you all drive through South Tucson, you notice there are violations on almost each and every property here. So, what I do as an Inspector is if I receive a complaint, and in this case, I know that I am dealing with an adjacent property owner, and I've dealt with him many times. I know that a few times he had mentioned to me about what are you doing about X and Y over here because there are violations there. So, anytime I get some complaint or, what about me, what about that property or this person or that person, I have to look into it. So, if I see violations whether they are major or minor, I have to act on that as a City official. So, that is kind of the case as to what happened here to some

extent with the adjacent neighbor, but if you ask me the truth, violation wise like I mentioned, every property has violations here in my opinion, as Mr. Navarro said earlier, he feels that he has enough probable cause to make an arrest, I feel as though if I had to act on this, it wouldn't be a civil citation in court. It would be up to the prosecuting attorney and myself to articulate the case, whether a win or not, it's hard to say. But if you ask me to the extent there are violations there, ok. Is there room for improvement, of course.

Mrs. Sears: What would that be when you say room for improvement?

Mr. Duarte: One of my concerns is you have those open pieces of concrete. They're not small, six or seven feet maybe, there were some parts of the concrete that is busted up on their property.

Mr. Larson: That right there is State property we are talking about, look at the photos.

Mr. Duarte: I'm not sure but you can correct me if I am wrong.

City Attorney Stinson: Is that slab part of that?

Mr. Luttrell: Yes, that's part of it. It used to be a building there. It was on it when I bought the property, I know that for sure.

Mrs. Sears: So, since that video, what he has done is not enough for the City?

Mr. Licea: I don't believe so.

Mrs. Sears: Why?

Mr. Licea: Because we're going to have these continuing problems with people camping out there, starting fires, burning, and burglary against the next property.

Mrs. Sears: So, all these people be vagrancy and trespassing in the Spanish Trail that actually has a building, and the people there that are drugging up, on bicycles, they've cut that fence, to me that is a more serious violation than cleaning up the desert.

Mr. Licea: The City has a laundry list. They are working with that property owner. They actually installed fencing, they installed security cameras and believe it or not, those cameras are actually helping out with some of the cases that the City is working on with right now. So, they actually are doing something.

Mrs. Sears: With Spanish Trail?

Mr. Licea: Yes, that property owner.

Mrs. Sears: That should be cleaned up.

City Attorney Stinson: The property that we are focusing on is whether or not there are violations on this property and if the violations, there are no errors on the notice of violation and that notice was whether we were asking for compliance.

Chief Denogean: Michelle, can I make a comment?

City Attorney Stinson: Of course.

Chief Denogean: I am Danny Denogean, Public Safety Director for the City of South Tucson. I've been here for two years and eight months. One of the things we are not talking about here, one of the major problems we're not talking about here, is the multiple brush fires we have had in that area since I have been here. We have had multiple, multiple brush fires and that's caused by the homeless people going out there and whether they do it intentionally or whether it's accident from warming fires or just campfires, and that's been a major problem for us. On February 22nd, the day that we had a big fire over at Old Spanish Trail, prior to that evening, we had three brush fires right over in that desert area. Just in May, we had a brush fire. We have had multiple brush fires there and that is always going to be a problem unless that place is cleaned up. As Josue is saying, either blade it and completely clear it, or fence it. And that's not going to go away if we don't take care of the situation.

Mr. Larson: But there is a discrepancy between the addresses that the Fire Department has. So, what addresses?

Chief Denogean: Well, you have 425 E. Benson Highway, which is Mr. Luttrell's property, and you have 305 E. Benson Highway. Many times, what happens when those reports come in, there's not something where you can identify an address and flip it to Mr. Luttrell's property, so they just put 305, but when you look at the property and look at the bottom line -

Mr. Larson: Just to be clear though, the reports of the fires are at 305, right?

Mr. Licea: I would like to -

Mr. Larson: Again, the reports of fires you are talking about are at 305.

Chief Denogean: No, 425.

Mr. Licea: If you read the narrative of the violation, it clearly states the desert area east of Spanish Trail which makes it clear that it is not the Spanish Trail property, it's Mr. Luttrell's property which has -

Mr. Larson: It is Spanish Trail (inaudible) resort, which is where the biggest fire was.

Mr. Licea: This is hardly any desert there; this is the one where (inaudible) and it's natural desert.

Mrs. Sears: I would just decide to give up and keep it clean.

Mr. Larson: Well, I will just finish up with this. Mr. Duarte, do you stand by your Inspection report from yesterday?

Mr. Duarte: With the agreement that there are minor violations, yes.

Mr. Larson: Ok, thanks. That's all I have.

Mr. Duarte: Now I'll leave the debris and the vegetation up to the panel.

Mr. Larson: You said no major debris.

Mr. Duarte: We took pictures on different days.

Mr. Larson: Yeah.

Mrs. Sears: So, do we agree it is just desert vegetation?

Mr. Duarte: No, there's weeds in excess of six inches, of course, but majority desert vegetation.

Mr. Favela: A violation by the book, is what you are saying?

Mr. Duarte: Yes.

Mr. Larson: Which you require of every property in South Tucson, according to you?

Mr. Duarte: I would say so. Yeah, but the problem is in that area, that is the area in question. That is what they are saying. It's not everybody in South Tucson. It's his property.

Mr. Larson: Look, the citation is for illegal dumping and so that has been cleaned up by Mr. Luttrell.

Mrs. Sears: That's true.

Mr. Licea: There's natural desert vegetation, there's three violations, ok, there's a cumulation of vegetation, there's littering, and then the public nuisance.

Mr. Larson: Debris and littering make no sense. You're not saying Mr. Luttrell's property -

Mrs. Sears: You go through it every day?

Mr. Luttrell: Yes.

City Attorney Stinson: The way the Code is, is litter and 7-33(C)(1), residents are responsible and (C)(2), any person who allows litter on the property is responsible under our Code.

Mr. Luttrell: And I am responsible, and I take care of it every day and I can't stop them, but the thing is, say if I were to fence that, to cut two pieces of fence off the drive through takes somebody probably less than fifteen minutes.

Mr. Larson: It sounds like you all understand because you have had your own fences torn down.

Mrs. Sears: Yes.

Mr. Duarte: Well, to avoid that, put up a wall.

Mr. Larson: A nice masonry wall.

Mrs. Sears: I thought Borderland has been broken into. That's not his problem or the City of South Tucson's problem.

Mr. Luttrell: Which is to my point, they have a fence, too, that is cut into, so the only difference being Borderland would be someone cut their fence on the backside or if I had a fence and they cut through my fence, then cut through his fence because he is complaining about people are breaking in there, and he has to, which you ask of my property, he has a fence and people cut into it.

City Attorney Stinson: I think that, are there any other questions from the Board, anything else that is on your mind? Ok, then we could probably go ahead and move to close the hearing. I am going to let the Chair take the lead here. Once we close the hearing, then we are going to go ahead, and you all can discuss it amongst yourselves. We're not basically going to present any further evidence at this point. You guys can discuss and make a decision on, you can of course ask in terms of form how we can move forward, but it's basically

whether you are affirming the notice of violation, or you are going to reverse it, so you can affirm it in whole, reverse it in whole, or you can make the choice to modify the notice of violation.

Chair De La Cruz: So, at this point -

City Attorney Stinson: Close the hearing.

Chair De La Cruz: At this point, I'll close the hearing.

City Attorney Stinson: Now you guys can go ahead and discuss. And just to, we can have a decision either tonight here or you guys and stay and we continue this off, or it will have to be rendered within five days.

Mr. Licea: Do they need to leave for this?

City Attorney Stinson: It doesn't say, it's still open to the public. The discussion is open to the public, so if you guys want to stay -

Mr. Larson: I'll stay.

Mr. Favela: You said we can modify it. What's, I mean, that's why I was asking all those questions about if he does plan on selling it to Borderland, I'm pretty sure they are going to do something with that property. My thinking is, he either puts a fence up if he is going to keep it, or if he is going to sell it, we reverse it or modify it.

Mrs. Sears: Yeah.

Mr. Favela: Because I understand what officers are saying, but it is annoying. It is a big eyesore, but being a business owner, fences do help no matter what. You're not going to prevent all the crime, but they deter it somewhat, but half a million dollars is quite a bit.

Mrs. Sears: Yeah.

Mr. Favela: So, if you plan on selling, ok, that's fine, but if you don't, you've got to put a fence up.

Mrs. Sears: He is taking every day daily steps to clean it up.

Mr. Favela: And that must be annoying for him, I mean, he's not young.

Mrs. Sears: I'm not young either, let me put that on the record.

Chair De La Cruz: So, I've got a question. So, if we reverse, that ends the case, and he doesn't start and we go back to the same thing again, what's the

Mrs. Sears: That's what I was asking -

City Attorney Stinson: Everyday that the property is out of violation can be cited as a new violation.

Chair De La Cruz: So, do we then, so let's say we cancel, we reverse. So how long does he have to sell it, what do we need to do.

Mr. Favela: I'm sure there's nothing we can do.

Chair De La Cruz: No, that I understand, but if it doesn't go for sale, we're going to be back again over here. So, technically, are we going to be just spinning our wheels in the sand and not going nowhere?

Mr. Favela: How can it be modified, can we put conditions on it.?

City Attorney Stinson: So, the way that the notice violation is currently written, you will see that there is a description of the violation, and there's action necessary to correct. So, one question is, is whether the description of the violation is correct. That is the first question that you all are trying to determine. The second question is, actions that the City is asking is necessary to correct, so to get in compliance, is that a reasonable request or is that arbitrary.

Mr. Favela: So, either he cleans up or sell it?

Mrs. Sears: I think their position is whether he has a weed problem or if he bought it and it has been a desert. I mean, if he bought it as a desert piece of property, why is it now a problem? Because of the person in front? I don't think he should be responsible for that. And when you are reading this, he has cleaned up all of his debris and all the stuff and the crap and everything. They've been seeing homelessness, it's everywhere in Tucson so to me, the description of the violation does not fit his property, and he is there cleaning it up every day. He said he is picking up litter. We're going to go with what he said. He said he was there yesterday and it's an open, large piece of property. It isn't weeds in front of somebody's house.

Mr. Favela: But if the Fire Department and the Police have to keep going there, I can understand that, too. But it's still his place.

Mrs. Sears: Yeah, but there's no fire information right there, no fire violation. There's no reports of the Fire Department going there. It wasn't presented to us, so how can we just go on somebody's word, I mean, they did all the other stuff, why not put in fire violation.

Mr. Favela: Is it a nuisance or violation, too. That's a violation, too, the cops keep having to go there. It's not good for him. It's a headache, it's a hassle, he can't stop people dumping.

Mrs. Sears: Let's come back to discuss it after we think about it.

Ms. Tecson: One of the allegations as an owner, if someone were to die, how would that affect him? I mean, I understand going back to the violations, yes, and the pictures they showed shows that they cleaned it up, and Mr. Luttrell said that he spent what, \$5,000, \$6,000.

Mr. Licea: Just to be clear, this is not just, at this point, the public session has closed, this is just discussion between you guys now.

Ms. Tecson: Ok.

(Inaudible, multiple people talking at once.)

Ms. Tecson: They're still excavating?

Mrs. Sears: I don't think so because I know I drove that property a month ago myself on my own time. I actually went there, that's why I asked everybody here, did you guys go visit the property? I did, and I saw one little patch where it was open where there was a fire. I didn't see any sofas, I didn't see any trash other than what rolls around with the wind, so maybe we should table it and you all should go visit the property

yourselves so you could see what we are talking about. If you haven't seen the property, how can we vote on that? I did my due diligence, and I visited the property.

Mr. Favela: Yeah, I drove by, too. It looks like desert, I mean, what's going to stop it tomorrow, I don't know, it's hard to say.

Mrs. Sears: But that's not what we are here for today. We are here to read these violations, right, description of the violations, action necessary, and if we stick to this, there really isn't a violation because he has cleaned up all of his debris, all of his trash. We can't help that there's rodents living there; it's a desert. It's a big piece of property that is a desert. He goes to the property every day, he picks up litter, he shoos people away until he sells the property. Now we should give, if we can, we should give him an expiration date, if by this date you haven't sold it, then the City can come out and -

Mr. Favela: Then modify it.

Mrs. Sears: Yeah, we are giving you a time.

Chair De La Cruz: He said they already have a contract. If you have a contract,

Mrs. Sears: Has it been accepted or not been accepted.

Chair De La Cruz: So, this is between us right now, so that is what I am saying, if -

Mrs. Sears: So that's not part of the violation.

Mr. Favela: If that's not part of the conditions, can we modify it?

City Attorney Stinson: You can direct to reinspect the property at a certain point, but you shouldn't go as far as to put it, I wouldn't put all of that in writing in terms of affecting a sale.

Mr. Favela: Modify with re-inspect?

Mrs. Sears: How about we go drive by the property again? It's not that far.

Chair De La Cruz: We can.

Mrs. Sears: Do we table it and come back?

Mr. Licea: Thank you guys for your time and just to be clear, as Michelle said, we do need a decision by the Code by within five days. Thank you.

Chair De La Cruz: Do we meet again or do we just or do I call you when something -

Mr. Licea: Probably best if we get it in writing. I think a huddle would be the best thing.

City Attorney Stinson: I think it would make sense for us to probably reconvene.

Mrs. Sears: Tomorrow?

Chair De La Cruz: Tomorrow I'm not available.

City Attorney Stinson: The question is, do we have a consensus that you all need extra time?

Mrs. Sears: I don't need extra time, but to me, he's not in violation.

City Attorney Stinson: Ok.

Mrs. Sears: He been holding enough.

City Attorney Stinson: Do we have a vote, basically, to modify, or reverse? Do you want to make a motion to reverse?

Mrs. Sears: I make a motion to reverse but if they haven't visited the property like I did, then it's up to them if they want to.

City Attorney Stinson: Well, we can see if there is a motion to reverse and a second, we can do so.

Mr. Favela: I want to reverse.

City Attorney Stinson: Is there a second?

Mr. Favela: Yes, reverse.

City Attorney Stinson: Did you guys want to vote? Right now, there is a motion to reverse the notice of violation currently on the property. We're going to do a Roll Call vote.

Eliazar De La Cruz: Here.

City Attorney Stinson: This is a vote, so we are waiting for a yes or a no to agree with reversing.

Chair De La Cruz: So, at this point, I say no at this point.

City Attorney Stinson: So, you are disagreeing with the motion to reverse?

Chair De La Cruz: At this point -

City Attorney Stinson: I just want to be clear on how you are voting.

Chair De La Cruz: No..

City Attorney Stinson: So, you are disagreeing with the motion to reverse.

Chair De La Cruz: Uh huh.

City Attorney Stinson: So that's one vote for reverse.

Chair De La Cruz: Maria Tecson. No at this point.

Chair De La Cruz: Diana Sears. According to the description of the violation, there is no violation, so reverse.

City Attorney Stinson: So we have two yes and two no's, so the Board is tied, so that means it does not pass, so if you guys could not agree, I think that the violation would probably stand right now, but if you are wanting some additional time to make that decision, the Code allows you to do so, but it is a reasonable time, no more than five days. So, would you like to continue to discuss?

Chair De La Cruz: Well, we are going to have to if we don't all agree.

Mrs. Sears: I have to go, I casted to reverse because what you mean here, and all the ifs, ands and what is going to happen in the future, that's not what we are to decide. We are here to read the description of the

violation, and to me, it's been met, so to me, I'm not going to change my mind. It's still a reverse. When I am leaving here, not what everybody is thinking it should be like, it's on here, right here.

Mr. Favela: I do agree, it is a nuisance to have homeless there. He should be responsible, but there is nothing, we can't force him to put a fence, we can't force him to sell, I'd rather just roll the dice and hopefully he does sell, and if we keep giving violations we will just have to keep coming back. Who's going to pay for that if we have to go through this again. I'm all for him selling, but if he doesn't, if that's what he wants to do, hopefully, but that's not our -

Mrs. Sears: We're not here for that. The description of the violation is it.

Mr. Favela: I'll just see what's there and what is on the pictures and the last report says there's nothing. Is it possible to re-inspect in three months?

Mrs. Sears: That's why everybody here should go visit the property instead of just going on -

City Attorney Stinson: We need to just stick with the evidence that has been presented here today.

Mrs. Sears: And it shows that the property has been cleared of debris, we've got the Code Enforcer that says he's cleared it.

Mr. Licea: So, it's still 2-2?

Mrs. Sears: I have to leave.

City Attorney Stinson: We have to have a motion to adjourn, and we will need to set a date to come back within the next five days. The Code isn't clear whether the five days includes the weekend or not. Would you be open to allowing that?

Mr. Larson: I'm open to allowing that because I think the Code might not be the Arizona law where there is a period of time under ten days, which doesn't count weekends, so I expressly agree that the five days doesn't count weekends.

City Attorney Stinson: So, we basically have until next Wednesday to make a decision. Because the Code does not say, is there a preference whether we reconvene for a decision, whether the parties agree there should be a reconvening of the Board, there isn't clarity on there.

Mr. Larson: On the days, I can't agree on your procedure, so -

City Attorney Stinson: I think because it is not clear, the Board probably should reconvene and make a decision on the record so we will have to do so within and make sure everyone is in agreement on the date and time. With that, we can make a motion to adjourn.

V. OLD BUSINESS - None

VI. OTHER BUSINESS - None

VII. AJDOURNMENT

Chair De La Cruz: I make a motion to adjourn the meeting.

Ms. Tecson: I second.

Mr. Licea: Thank you everybody.

Mr. Larson: Thank you.

The meeting is adjourned.

ATTEST:

CERTIFICATION

I hereby certify that the foregoing minutes are a true and correct copy of the Regular Meeting of the Board of Appeals of the City of South Tucson, Arizona, held on the 10th day of July, 2024. I further certify the meeting was duly called and a quorum was present.

Dated this _____ day of _____, 2024.
