

Staff Summary Report



Board of Adjustment Hearing Date: April 28, 2010

Agenda Item Number: 2

SUBJECT: Appeal of the January 5, 2010 Hearing Officer's decision to approve the request by City of Tempe Code Compliance to abate public nuisance items at the **FRAWLEY RESIDENCE** located at 1103 East Palmcroft Drive.

DOCUMENT NAME: 20100428dsjt01

PLANNED DEVELOPMENT (0406)

SUPPORTING DOCS: Yes

COMMENTS: Appeal of the January 5, 2010 Hearing Officer's decision to approve the request by City of Tempe Code Compliance to abate public nuisance items in violation of the Tempe City Code for the **FRAWLEY RESIDENCE (PL090457 /ABT09040 /ABA10001 /CE095022)** (Robert Frawley, property owner) located at 1103 East Palmcroft Drive in the R1-6, Single Family Residential District.

PREPARED BY: Jeff Tamulevich, Code Compliance Administrator (480-350-8441)

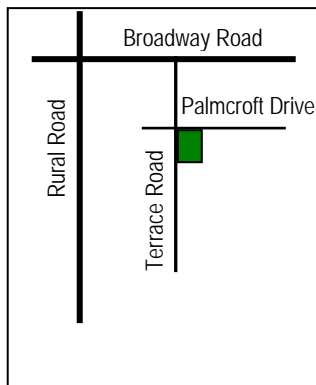
REVIEWED BY: Steve Abrahamson, Planning & Zoning Coordinator (480-350-8359) *SEA*

LEGAL REVIEW BY: N/A

FISCAL NOTE: N/A

ADDITIONAL INFO: Code Compliance is requesting approval to abate the **FRAWLEY RESIDENCE** at 1103 East Palmcroft Drive in the R1-6, Single Family Residential District. This residence is located south of Broadway Road and east of Rural Road, on the southeast corner of Terrace Road and Palmcroft Drive. The details of this case represent several months of correspondence for compliance with the property owner. Staff requests the approval of abatement of the following nuisance items under Complaint CE095022: deteriorated landscaping.

Existing zoning – R1-6, Single Family Residential District
Lot Area – 7,985 s.f.
Building Area – 1,889 s.f.
Year of Construction - 1970



PAGES:

1. List of Attachments
2. Comments; History & Facts

ATTACHMENTS:

1. Location Map
2. Aerial Photo
- 3-12. Neighborhood Enhancement Report
13. COT Letter of Resolution from 1/5/10 HO
14. Letter of Appeal from Mr. Frawley dated 1/19/10
15. COT Appeal Notification dated 1/25/10

COMMENTS:

Code Compliance is requesting approval to abate the Frawley Residence at 1103 E. Palmcroft Drive. This case was initiated on August 31, 2009 following which Code Compliance has attempted to obtain compliance through correspondence with the property owner, Richard Frawley, regarding violations of the Tempe City Code for deteriorated landscaping.

Mr. Frawley has a significant history of violating Tempe City Code with regards to deteriorated landscaping, this being the twelfth case since 2000. Mr. Frawley has been issued eight (8) civil citations as well as one habitual offender fine, all for which he failed to pay or appear in court. In February 2008, Mr. Frawley was found guilty in criminal court for failure to maintain his landscaping. No previous abatements have been conducted, although in April 2009 the abatement process was initiated but subsequently withdrawn when the owner brought the property into compliance.

Because of the extensive history on this property, Code Compliance requests approval to abate this public nuisance in accordance with section 21-53 of the Tempe City Code and further requests approval to complete additional abatements as deemed necessary by Code Compliance for a period not to exceed one hundred and eighty (180) days from this abatement order.

HISTORY & FACTS:

A detailed history and facts of this case are outlined in the attached memorandum from the Code Compliance Inspector.

Key dates include:

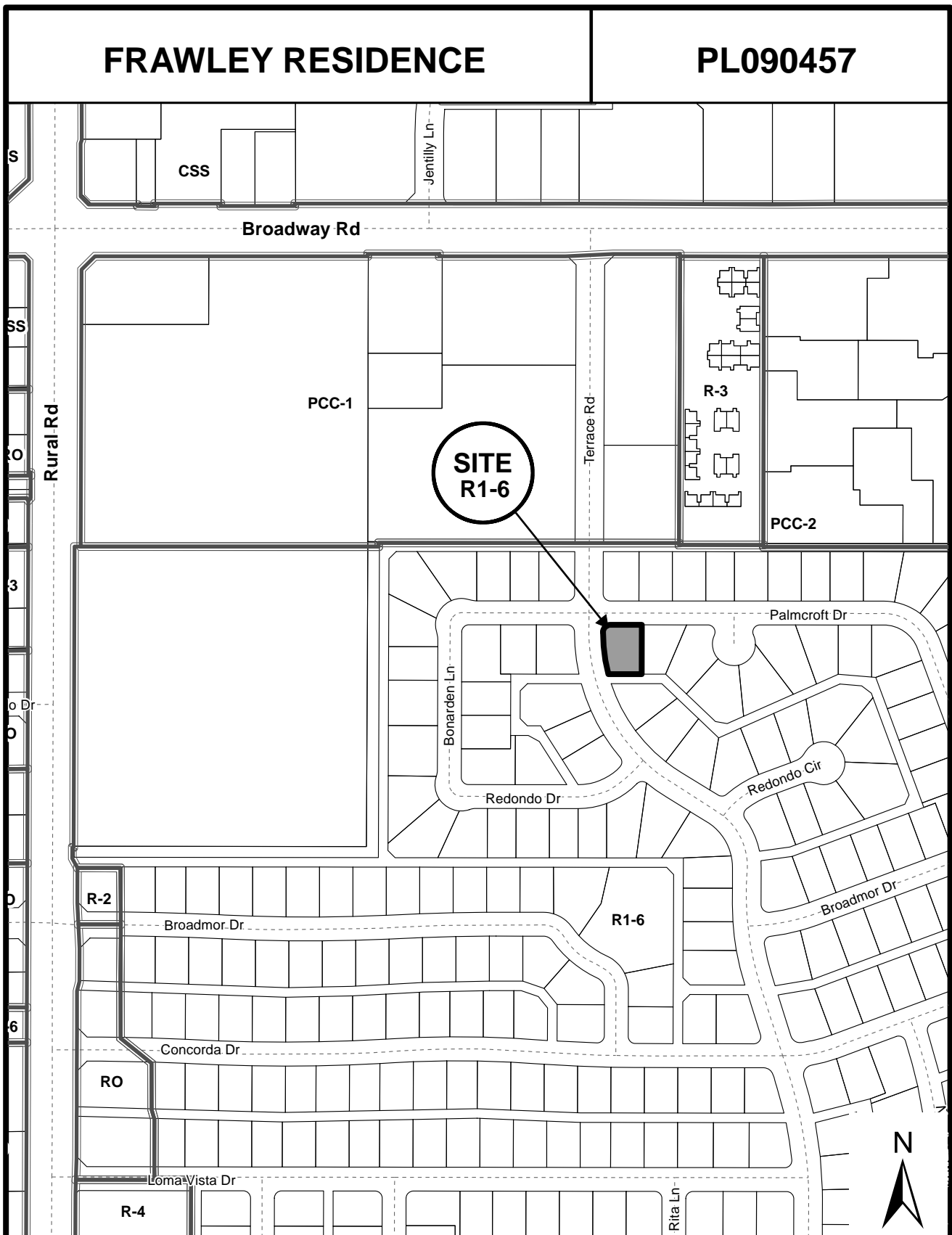
April 7, 2010	Property was re-inspected by Jeff Tamulevich, Code Compliance Administrator and continues to be in violation.
March 24, 2010	Case continued to the April 28, 2010 Board of Adjustment at the request of Jeff Tamulevich, Code Compliance Administrator, due to progress being made on the property's violations.
February 24, 2010	Board of Adjustment cancelled; appeal case continued to March 24, 2010 Board of Adjustment. Mr. Frawley was notified by staff.
January 19, 2010	Mr. Frawley filed an appeal of the Hearing Officer's decision.
January 5, 2010	Hearing Officer approved abatement for deteriorated landscaping for an open period of 180 days.
November 30, 2009	Abatement process initiated.
September 17, 2009	No change to deteriorated landscaping; final notice sent.
August 31, 2009	Case initiated following complaint for deteriorated landscaping, uncontrolled growth of grass and weeds throughout gravel landscaping in front and side yards.

PROPERTY HISTORY

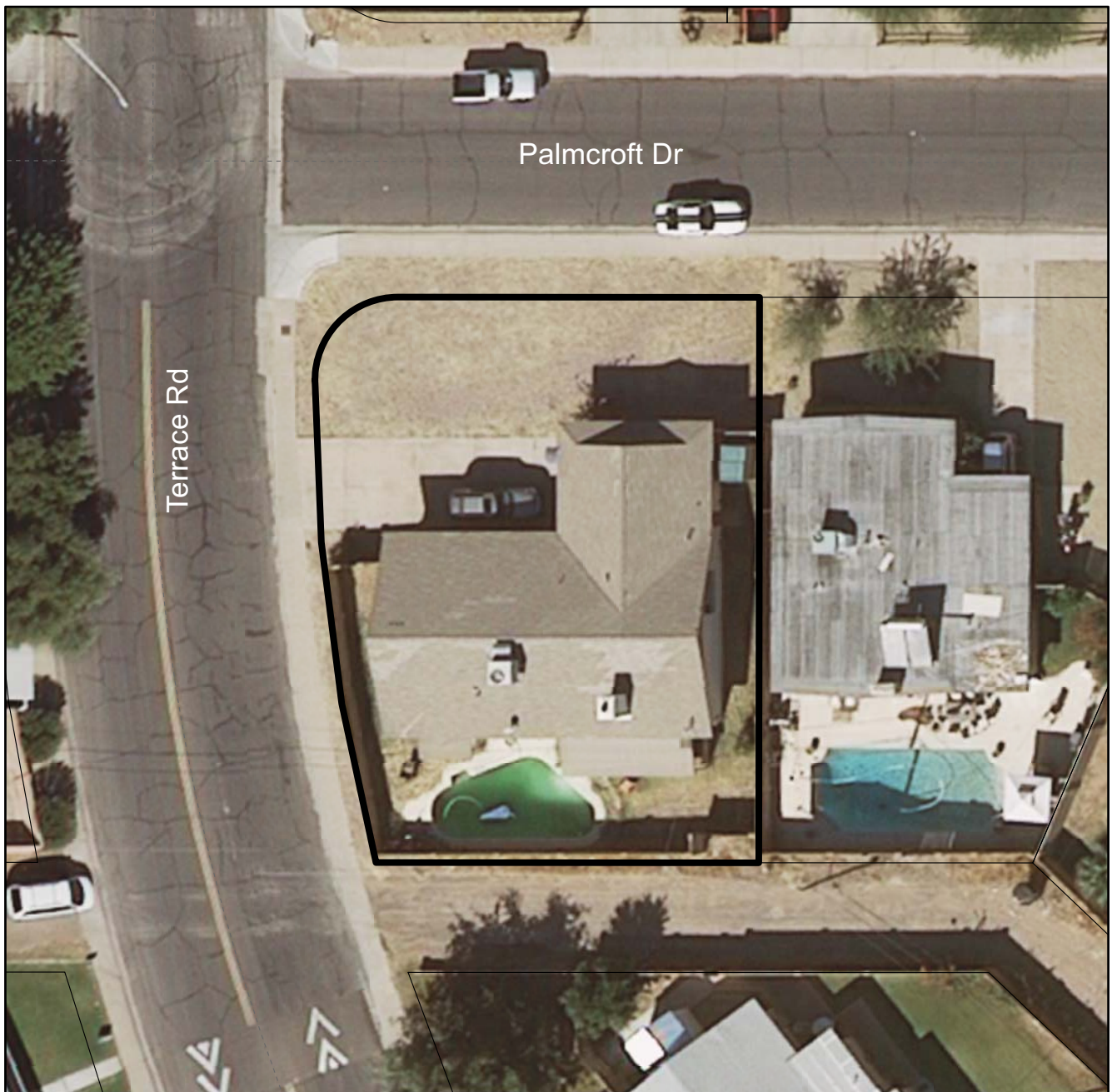
Code Compliance has worked eleven (11) previous cases on this property for deteriorated landscaping.

June 2, 2009	Abatement Hearing canceled after owner brought the property into compliance.
April 27, 2009	Abatement process initiated
March 11, 2009	Second citation issued; habitual offender fine applied

October 7, 2008	Citation issued
August 26, 2008	Case initiated for deteriorated landscaping
March 30, 2006	Second Citation issued
March 8, 2006	Citation issued
February 8, 2006	Case initiated for deteriorated landscaping
August 16, 2005	Second citation issued
July 28, 2005	Citation issued
June 20, 2005	Case initiated for deteriorated landscaping
January 27, 2005	Case initiated for deteriorated landscaping
November 3, 2004	Case initiated for deteriorated landscaping
April 2, 2004	Case initiated for deteriorated landscaping
February 12, 2003	Case initiated for deteriorated landscaping
July 24, 2002	Second citation issued
May 7, 2002	Case initiated for deteriorated landscaping; Citation issued
March 20, 2002	Case initiated for deteriorated landscaping
July 20, 2001	Case initiated for deteriorated landscaping
August 16, 2000	Case initiated for deteriorated landscaping



Location Map



FRAWLEY RESIDENCE (PL090457)

DATE: 11/30/09
TO: Mike Spencer, Sr. Code Inspector
FROM: Julie Scofield
SUBJECT: Request to Authorize for Abatement– Reference Complaint #CE095022

LOCATION: 1103 E. Palmcroft Dr. Tempe, AZ 85282
LEGAL: Book 133, Map 56, Parcel 111, as recorded with the Maricopa County Assessor
OWNER: Richard Frawley
1103 E. Palmcroft Dr.
Tempe, AZ 85282

FINDINGS:

- 08/31/09 The Neighborhood Enhancement Department received a complaint on the above property for deteriorated landscaping. The property was inspected. Uncontrolled growth of grass and weeds are growing throughout the gravel landscaping in the front and side yard. A notice to comply was mailed to the property owner, Richard Frawley.
- 09/17/09 The property was re-inspected. There has been no change in the condition of the property. A final notice was mailed to the property owner.
- 09/21/09 An estimate was requested from contractor Jack Harrington for the abatement of the deteriorated landscaping.
- 09/22/09 The estimate was received for the abatement in the amount of \$1438.00. This would cover the cost of completely removing the grass/weeds and having a police officer present.
- 11/30/09 The application for the abatement was submitted.

PROPERTY HISTORY:

- ✓ 08/16/00 Property was in violation for deteriorated landscaping.
- ✓ 07/20/01 Property was in violation for deteriorated landscaping.
- ✓ 03/20/01 Property was in violation for deteriorated landscaping.
- ✓ 05/07/02 Property was in violation for deteriorated landscaping. A citation was issued.
- 07/24/02 Property was in violation for deteriorated landscaping. A second citation was issued.
- 02/12/03 Property was in violation for deteriorated landscaping.
- ✓ 04/02/04 Property was in violation for deteriorated landscaping.
- ✓ 11/03/04 Property was in violation for deteriorated landscaping.
- ✓ 01/27/05 Property was in violation for deteriorated landscaping.
- ✓ 06/20/05 Property was in violation for deteriorated landscaping.

07/28/05 Property was in violation for deteriorated landscaping. A citation was issued.

08/16/05 Property was in violation for deteriorated landscaping. A second citation was issued.

02/08/06 Property was in violation for deteriorated landscaping.

03/08/06 Property was in violation for deteriorated landscaping. A citation was issued.

03/30/06 Property was in violation for deteriorated landscaping. A second citation was issued.

08/26/08 Property was in violation for deteriorated landscaping.

10/07/08 Property was in violation for deteriorated landscaping. A citation was issued.

03/11/09 Property was in violation for deteriorated landscaping. A second citation that included habitual offender was issued.

04/27/09 Application for abatement was submitted for the cleanup of the landscaping.

06/02/09 Abatement hearing was cancelled due to the owner cutting down the grass and weeds.

RECOMMENDATIONS:

I recommend the approval for abatement at 1103 E. Palmcroft Dr., which is owned by Mr. Richard Frawley. I would also like to ask for a rolling abatement that would allow Code Compliance to do an abatement if needed within the next 180 days. Mr. Frawley has been given ample time and opportunities to bring his property into compliance and has failed to take corrective action. Due to the history of this property, it is very clear that Mr. Frawley is unable to keep his property in compliance. There has been no indication in Mr. Frawley actions that he plans to correct and maintain his property. In the last seven (7) years, Mr. Frawley has been issued eight (8) citations in which he failed to pay or appear in court.

Respectfully submitted,
Julie Scofield

ACTION TAKEN: submit

NAME Julie Scofield

DATE: 11-30-09

JACK HARRINGTON
3831 W AVALON
PHOENIX, AZ. 85019
TEL: (602) 446-2630
FAX: (602) 347-5487
EMAIL: JACKHBOARDUPS@YAHOO.COM

THE FOLLOWING DOCUMENT IS FOR:

NAME: JULIE SCOFIELD

FIRM: CITY OF TEMPE CODE COMPLIANCE

DATE: 9-22-09 TIME: 9:20 A.M. _____ P.M.

PROPOSAL

WE PROPOSE TO DO THE FOLLOWING WORK FOR THE CITY OF TEMPE
UNDER CONTRACT # TO8-092-02

ADDRESS: 1103 E. Palmcroft Dr.

Remove all grass and weeds from front and side yards.

Heavy spray of pre- emergent to control future growth

- | | |
|--|-----------------|
| 1. Hand pull all grass and weeds growing through gravel from front & side yard.
4 men 1 day 32 man hrs @ \$22./hr | \$704.00 |
| 2. Spraying of Pre Emergent for future growth. | \$30.00 |
| 3. Police officer at property – 8 hrs @ \$50./hr | <u>\$400.00</u> |
| Total | \$1,438.00 |

Note: Pre-emergent safety data sheet has been included with email.

THANK YOU

ACCEPTANCE

JACK HARRINGTON



City of Tempe
P. O. Box 5002
Tempe, AZ 85280
www.tempe.gov
(480) 350-8372
(480) 858-2231 (fax)

Neighborhood Enhancement Department

NOTICE OF INTENT TO ABATE PUBLIC NUISANCE

DATE: 11/30/09

TO:

**RICHARD FRAWLEY
1103 E. PALMCROFT DR.
TEMPE, AZ 85282**

This serves as notification of the City of Tempe's intentions regarding the abatement of code violations on the following described property:

LEGAL: Book 133, Map 56 Parcel 111, as recorded with the Maricopa County Assessor.

**LOCATION: 1103 E. PALMCROFT DR.
TEMPE, AZ 85282**

This office will submit this complaint to the Development Services Abatement Hearing Officer to be placed on the Hearing Officer agenda of 01/05/2010. We are requesting Hearing Officer Authorization to abate this public nuisance codes in accordance with Section 21-53 of the Tempe City Code by completely removing any grass and or weeds in a gravel landscaping. TCC 21-3-B-8 which prohibits landscaping that is dead, over height, damaged, uncontrolled, or presents a deteriorated or slum-like appearance.

As owner of the property, you have thirty (30) days after receipt of this letter to abate or correct the violation. If the violations have not been corrected within thirty days, our office will proceed with the abatement process. Upon receipt of the Hearing Officer approval to abate this public nuisance, the necessary work will be performed at the expense of the property owner. The cost of this work will be \$1438.00. In addition to the actual cost of abatement, an administrative charge of fifteen (15) percent of the actual cost of abatement or three hundred (\$300) dollars, whichever is greater, for expenses incurred by the city for abatement procedures, and the cost of recording liens and releases will be charged. The recorded lien may bear interest at the legal rate for judgments in the State of Arizona. Administrative charges and the cost of recording liens and releases shall become a lien on the property whether or not the public nuisance is abated by the City. If you have questions regarding this matter, please contact our office at (480) 350-8372.

Code Enforcement Officer: Julie Scofield

Phone Number 480-350-8951



**City of Tempe Code Compliance Division
Notice to Comply: Article I. Nuisances**

Mailed on Date: 9/1/09

**RICHARD FRAWLEY
1103 E. PALMCROFT DR.
TEMPE, AZ 85282**

This notice to comply is to inform you that on 8/31/09, the property located at 1103 E. PALMCROFT DR. was inspected and found to be in violation of the following subsection(s) of the Nuisance and Property Enhancement Ordinance, Chapter 21, Article I, of the Tempe City Code. A re-inspection will be conducted on 9/16/09 or after this date to verify compliance. If the property is brought into compliance with the code you will not be subject to citations or fines for the violation(s).

Violation of the Tempe City Code, Chapter 21-3-b-8

Any landscaping, visible from public property, that is substantially dead, damaged, or characterized by uncontrolled growth, or presents a deteriorated or slum-like appearance; uncultivated plants, weeds, tall grass, uncultivated shrubs or growth (whether growing or otherwise) higher than twelve (12) inches; or 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 (8) feet or dry fronds longer than five (5) feet and closer than eight (8) feet to the ground;

Please take the following corrective action by: 9/16/08

Required Correction(s):

1. PLEASE COMPLETELY REMOVE ALL GRASS AND WEEDS FROM THE FRONT AND SIDES OF THE GRAVEL LANDSCAPING.

We appreciate your cooperation in this matter. For questions or further information please contact the Code Enforcement Division at 480-350-8372. Failure to comply may result in civil citation, criminal charges or abatement of the violation.

Civil and Criminal Penalties

Section 21-3, Enumerated Violations subsections (b) 1-8 and 17-19, Section 21-4 Enumerated Violations 1-4: 1st occurrence \$150 dollars per violation, 2nd occurrence \$250 dollars per violation, 3rd occurrence \$350 dollars per violation.

Section 21-3, Enumerated Violations subsections (b) 9-16: 1st occurrence \$350 dollars per violation, 2nd occurrence \$650 dollars per violation, 3rd occurrence \$950 dollars per violation.

Section 21-4 (B), Habitual Offender: 1st occurrence \$500 dollars + sum of other fines, 2nd occurrence \$1000 dollars + sum of other fines, 3rd occurrence \$1,500 dollars + sum of other fines.

The city has authority to abate the violation should the owner neglect, fail, or refuse to correct the violation within (30) days and to assess a lien against the property for cost of abatement.

The city prosecutor is authorized to file a criminal class 1 misdemeanor complaint in the Tempe Municipal Court for violations of this chapter.

Code Inspector: JULIE SCOFIELD

Phone Number: 480-350-8951

E-mail: JULIE_SCOFIELD@TEMPE.GOV



**City of Tempe Code Compliance Division
Final Notice to Comply: Article I. Nuisances**

Mailed on Date: 9/18/09

**RICHARD FRAWLEY
1103 E. PALMCROFT DR.
TEMPE, AZ 85282**

This notice to comply is to inform you that on 9/17/09, the property located at 1103 E. PALMCROFT DR. was inspected and found to be in violation of the following subsection(s) of the Nuisance and Property Enhancement Ordinance, Chapter 21, Article I, of the Tempe City Code. A re-inspection will be conducted on 10/2/09 or after this date to verify compliance. If the property is brought into compliance with the code you will not be subject to citations or fines for the violation(s).

Violation of the Tempe City Code, Chapter 21-3-b-8

Any landscaping, visible from public property, that is substantially dead, damaged, or characterized by uncontrolled growth, or presents a deteriorated or slum-like appearance; uncultivated plants, weeds, tall grass, uncultivated shrubs or growth (whether growing or otherwise) higher than twelve (12) inches; or 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 (8) feet or dry fronds longer than five (5) feet and closer than eight (8) feet to the ground;

Violation of the Tempe City Code, Chapter 21-4(b)

It shall be a separate citable offense to be a habitual offender of this code.

Habitual offender means any person that on at least one prior occasion within a twelve (12) month period of adjudication has had:

- (1) At least one conviction, either civil or criminal, or a default judgment entered, of a violation of this chapter; or
- (2) Has had abatement action approved against any property the habitual offender owns.

Sec. 21-43. Notice to comply.

(d) Additional notice; notice not required. Nothing herein shall preclude the city from giving additional verbal or written notice at its discretion but it is not obligated to notify the same person as to a second (or additional) violation which has been the subject of a notice to comply within the previous twelve (12) month period. If the city does elect to give any additional notice in any instance, it shall not thereby become obligated to give such additional notice thereafter in the same or other situations. Nothing in this section shall require the issuance of a second notice to comply within twelve (12) months prior to commencement of civil or criminal violation proceedings.

(e) Notification-habitual offender. Complaints on properties owned by habitual offenders will proceed through an expedited process. The expedited process applies to any person who meets the definition of habitual offender, whether or not the person has been convicted under § 21-4(b). Habitual offenders are not entitled to a time period to cure infractions or other written or formal notice of violations. Upon discovering that a property is owned by a habitual offender, the code inspector may:

- (1) Initiate court or abatement action without providing written or formal notice to the responsible party;
- (2) Issue a formal notice of violation or civil infraction citation, including notification that the responsible party has been deemed a habitual offender; or
- (3) Initiate abatement action or criminal proceedings against the responsible party.

Please take the following corrective action by: 10/2/09

Required Correction(s):

- 1. PLEASE COMPLETELY REMOVE ALL GRASS AND WEEDS FROM THE FRONT AND SIDES OF THE GRAVEL LANDSCAPING.**

We appreciate your cooperation in this matter. For questions or further information please contact the Code Enforcement Division at 480-350-8372. Failure to comply may result in civil citation, criminal charges or abatement of the violation.

Civil and Criminal Penalties

Section 21-3, Enumerated Violations subsections (b) 1-8 and 17-19, Section 21-4 Enumerated Violations 1-4: 1st occurrence \$150 dollars per violation, 2nd occurrence \$250 dollars per violation, 3rd occurrence \$350 dollars per violation.

Section 21-3, Enumerated Violations subsections (b) 9-16: 1st occurrence \$350 dollars per violation, 2nd occurrence \$650 dollars per violation, 3rd occurrence \$950 dollars per violation.

Section 21-4 (B), Habitual Offender: 1st occurrence \$500 dollars + sum of other fines, 2nd occurrence \$1000 dollars + sum of other fines, 3rd occurrence \$1,500 dollars + sum of other fines.

The city has authority to abate the violation should the owner neglect, fail, or refuse to correct the violation within (30) days and to assess a lien against the property for cost of abatement.

The city prosecutor is authorized to file a criminal class 1 misdemeanor complaint in the Tempe Municipal Court for violations of this chapter.

Code Inspector: JULIE SCOFIELD

Phone Number: 480-350-8951

E-mail: JULIE_SCOFIELD@TEMPE.GOV







City of Tempe
P. O. Box 5002
31 East Fifth Street
Tempe, AZ 85280
www.tempe.gov



Development Services
Planning

(480) 350-8331

January 7, 2010

Mr. Richard Frawley
1103 East Palmcroft Drive
Tempe, Arizona 85282

RE: **PL090457 / ABT09040 / CE095022**
FRAWLEY RESIDENCE ABATEMENT

Dear Mr. Frawley:

The request by the City of Tempe – Code Compliance Department to abate public nuisance items in violation of the Tempe City Code for the **FRAWLEY RESIDENCE (PL090457 / ABT09040 / CE095022)** (Robert Frawley, property owner) located at 1103 East Palmcroft Drive in the R1-6, Single Family Residential District was heard by the Hearing Officer on January 5, 2010.

At that time, the Hearing Officer approved abatement proceedings for PL090457/ABT09040/CE095022 as outlined in the estimate contained in the abatement documentation, and authorized the Code Compliance Department to process abatement proceedings for an open period of one hundred eighty days (180 days) as necessary.

Any appeal to the Hearing Officer's decision must be made to the Board of Adjustment within fourteen (14) calendar days of the hearing. You have until **January 19, 2010** to file a formal **written** appeal to the Board of Adjustment if you so desire. If you fail to file an appeal or bring the property into compliance prior to this date, the code violation(s) addressed at the public hearing on January 5th will be abated by the City.

If you have any questions please contact me at (480) 350-8951.

Sincerely,

A handwritten signature in black ink, appearing to read 'Julie Scofield', with a stylized flourish at the end.

Julie Scofield
Code Compliance Inspector

JS/dm

cc: Mr. Michael Spencer/Code Compliance Senior Inspector
Mr. Jeff Tamulevich/DSD – Code Compliance Administrator
Ms. Decima Server – Development Services Liaison
File

Richard Frawley
1103 E Palmcroft Dr
Tempe, Az 85282

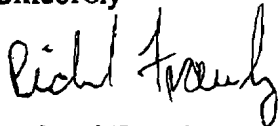
January 19, 2010

RE: PL090457/ABT09040/CE095022
FRAWLEY RESIDENT ABATEMENT

Dear Board of Adjustment:

I am hear by requesting an appeal on the Abatement on my resident at 1103 E. Palmcroft Dr. Tempe, Arizona 85282. I am a good resident to the city. I live by my self, I am quite in a part of town where there are quite a few college kids with lots of parties. I am sure we can work this out some how. Thanks for your time.

Sincerely



Richard Frawley

*Rec'd 1/19/10
dm*

ABA 10001

City of Tempe
P. O. Box 5002
31 East Fifth Street
Tempe, AZ 85280
www.tempe.gov



Development Services
Planning

(480) 350-8331

January 25, 2010

Mr. Richard Frawley
1103 East Palmcrot Drive
Tempe, Arizona 85282

RE: **PL090457 / ABT09040 / CE095022 / ABA10001**
FRAWLEY RESIDENCE ABATEMENT
1103 East Palmcrot Drive

Dear Mr. Frawley:

Your appeal of the January 5, 2010 Hearing Officer's decision to approve abatement proceedings for an open period of one hundred eighty days (180 days) has been received.

This appeal is tentatively scheduled to be heard by the Board of Adjustment on **February 24, 2010**. This hearing will be held in the Council Chambers located at 31 East 5th Street at 6:00 PM. A copy of the agenda and staff summary report will be mailed to you prior to that date.

Please plan to attend this hearing. If you have any questions please contact me at (480) 350-8951.

Sincerely,

A handwritten signature in black ink that reads 'Julie Scofield'.

Julie Scofield
Code Compliance Inspector

JS/dm

cc: Mr. Michael Spencer/Code Compliance Senior Inspector
Mr. Jeff Tamulevich/DSD – Code Compliance Administrator
Ms. Decima Server – Development Services Liaison
File