



# City of Madison

City of Madison  
Madison, WI 53703  
www.cityofmadison.com

## Meeting Minutes - Draft ADMINISTRATIVE REVIEW BOARD

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Tuesday, May 21, 2013

4:30 PM

Room 108, City-County Building  
210 Martin Luther King, Jr. Boulevard

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### CALL TO ORDER / ROLL CALL

**Present:** 7 -

Chris Schmidt; Scott J. Resnick; Marsha A. Rummel; David Ahrens; Anita Weier; Matthew J. Phair and Shiva Bidar-Sielaff

**Absent:** 1 -

Paul E. Skidmore

**Others Present:** Kyeong Kim (Appellant), George Hank (Building Inspection Director, Defendant), Lara Mainella (Assistant City Attorney for ARB) and Lisa Veldran (ARB Staff)

Ald. Chris Schmidt, Chair, called the meeting to order at 4:33 p.m.

Ald. Schmidt determined that the hearing was properly noticed and that the all parties were present.

### DISCLOSURES AND RECUSALS

Ald. Chris Schmidt noted that Ms. Kim was his constituent and that he had no contact or discussions with her regarding the appeal.

### APPEAL

Ald. David Ahrens left at 5:03 p.m.

**Present:** 6 -

Chris Schmidt; Scott J. Resnick; Marsha A. Rummel; Anita Weier; Matthew J. Phair and Shiva Bidar-Sielaff

**Excused:** 2 -

Paul E. Skidmore and David Ahrens

30096

Appeal to Administrative Review Board: Kyeong Kim - Appeal of Snow/Ice Removal Charges

**Attachments:** [4/22/13 Kyeong Kim ARB Appeal Letter Attachments.pdf](#)  
[052113 Kyeong Kim Hearing Notice.pdf](#)  
[CCOC Rules of Procedure for ARB Hearings.pdf](#)  
[Exhibit 1 - ARB Mtg 5 21 13.pdf](#)  
[Exhibit 2 - ARB Mtg 5 21 13.pdf](#)  
[Exhibit 3 - ARB Mtg 5 21 13.pdf](#)  
[Exhibit 4 - ARB Mtg 5 21 13.pdf](#)  
[Exhibit 5 - ARB Mtg 5 21 13.pdf](#)  
[Exhibit 6 - ARB Mtg 5 21 13.pdf](#)  
[Exhibit 7 - ARB Mtg 5 21 13.pdf](#)  
[Exhibit 8 - ARB Mtg 5 21 13.pdf](#)

Ald. Chris Schmidt requested the appellant and the defendant to state their names and spell their names: Kyeong Kim, stated her name and spelled it first (appellant) and George Hank stated his name and spelled it second (defendant).

Ald. Chris Schmidt then introduced members of the Administrative Review Board (that were present) and staff: Alders David Ahrens, Anita Weier, Matt Phair, Shiva Bidar-Sielaff, Marsha Rummel, Scott Resnick, ACA Lara Mainella and Council staff Lisa Veldran.

Ald. Schmidt then reviewed his role as chair, he Administrative Review Board Rules, adopted by the Common Council Organizational Committee on May 7, 2013 and were attached to the May 21, 2013 Administrative Review Board agenda materials, and the sequence of the hearing. The appellant and the defendant would be afforded 3 minutes each for opening remarks and closing remarks (if they chose to make remarks) and time for rebuttal. He noted that the Administrative Review Board had the option of going into closed session to deliberate (WI Stats 19.85(1)(a)). The decision would be made in the form of a motion, would be a simple majority vote, and that the decision of the Administrative Review Board could be subject to judicial review. ACA Mainella explained that her role was to only give legal advice to the board members on how to conduct the hearing.

Ald. Schmidt called Ms. Kyeong Kim, appellant, to the table.

Ald. Schmidt asked if Ms. Kim or Mr. George Hank had opening statements. Both declined to offer an opening statement.

Ald. Schmidt administered the oath to Ms. Kim.

Ms. Kim testified that the Snow Citation and Removal Charge of \$143.25, issued by the City of Madison Building Inspection Division, was not fair. She referenced her appeal letter dated April 22, 2013, the bad weather, that she had never received this citation before, other neighbors had ice and did not receive a citation and that she had removed the snow but could not remove the ice. City treated the ice with a blue chemical but did not remove the ice. She broke up the ice and removed it. She did not think she should pay for the charge since she did all the work. Ms. Kim submitted Exhibit 1 – photos of before and

after snow removal at 4017 Birch Avenue.

Ald. Marsha Rummel asked Ms. Kim if this was her first citation for lack of snow/ice removal. Ms. Kim stated that it was. Ald. Rummel asked how long she had resided at the address. Ms Kim stated since 1995.

Ald. Shiva Bidar-Sielaff asked Ms. Kim if it was her understanding that the information in the letter she received from the city, and the conversation she had with Mr. Hank, that the charge she had received was for the city to remove the ice on her sidewalk NOT a ticket because she had not removed it. Ms. Kim thought the charge she received was for the city crew to remove the ice. She stated that she did not know it was the law and she would be fined.

Ald. Matt Phair asked if she had taken the photos she had submitted as Exhibit 1 and if there were color photos. It was noted that Mr. Hank had color photos that he would be submitting.

Ald. Schmidt called Mr. George Hank, defendant and City of Madison Building Inspection Unit Director, to the table. Ald. Schmidt administered the oath.

Mr. Hank submitted the following documents as exhibits:

Exhibit 2 – Copy of MGO 10.28 (1), (2) (3) Snow and Ice To Be Removed From Sidewalks

Exhibit 3 – Copy of photo – 4017 Birch Ave Citation Photo – February 25, 2013

Exhibit 4 – Copy of doorcard used by City of Madison Building Inspection Division for failure to remove snow/ice from the public sidewalk

Exhibit 5 – Copy of photo – 4017 Birch Ave. Before Removal Photo – February 26, 2013

Exhibit 6 – Copy of photo – 4017 Birch Ave. After Removal Photo – February 26, 2013

Exhibit 7 – Copy of Service Performed and Costs at 4017 Birch Avenue

Mr. Hank clarified that the charge was for snow removal, not forfeiture for violating the snow removal ordinance; it was a fee for service.

He stated that there are times when snow/ice is bonded to the sidewalk and that property owners are required to remove as much snow/ice from the sidewalk and then treat the sidewalk with sand or salt. In this case some of the snow/ice was removed (but not completely removed) AND NOT treated with sand or salt (see Exhibit 5 and Exhibit 6). / Mr. Hank completed his testimony.

Ald. Schmidt asked Ms. Kim if she had any questions related to the testimony just given by Mr. Hank. Ms. Kim asked if the crew removed the snow. Mr. Hank stated that the crew removed the ice.

Ald. David Ahrens asked if Building Inspection took into account "demonstrable" effort by the property owners in these cases. Mr. Hank stated that if the property owner makes an effort to remove the snow/ice AND treat with sand or salt, they are in compliance with the ordinance.

Ald. Anita Weier asked what the fine was. Mr. Hank stated that it was \$114. / Ald. David Ahrens left at 5:03 p.m.

Ald. Bidar-Sielaff asked when the ticket was placed on the door and when the

crew showed up. Mr. Hank stated that the notice was placed on the property owner's door at 2:53 p.m. on February 23, 2013.

Ald. Rummel asked whether the crew shoveled. Mr. Hank stated that he disagreed with the property owner's assessment that no shoveling was done. He believed that the two photos (Exhibit 5/Exhibit 6) clearly showed snow/ice had been removed.

Ald. Resnick asked if any immediate neighbors had been cited or if this was an isolated incident. Mr. Hank believed that there weren't many citations issued in the vicinity but in the photos you could see that neighboring property owners' sidewalks had been cleared. Ald. Schmidt asked if these photos submitted were indeed of Ms. Kim's property/sidewalk. Mr. Hank stated affirmative. Ald. Schmidt asked who took the photos. Mr. Hank stated Marla Rouse, property maintenance inspector (Exhibit 3) and the contractor/crew (Exhibit 5/Exhibit 6). Ald. Schmidt asked how this Ms. Kim's property came to the attention of Building Inspection. Mr. Hank stated it was a complaint from the public.

Ald. Weier asked if this fine was being challenged in municipal court. Mr. Hank did not know.

Ms. Kim provided rebuttal. Ald. Schmidt noted that the photos were taken from different angles (Exhibit 3 and Exhibits 5 & 6). Ms. Kim marked a copy of Exhibit 6 to show where her property line was located and that the snow/ice removed was not all within her property line, but also was within her neighbor's property.

Exhibit 8 – Copy of Photo (Exhibit 6) Marked by Ms. Kyeong Kim – 4017 Birch Ave. After Removal Photo – February 26, 2013 / Ms. Kim indicated that she had completed her rebuttal.

Mr. Hank asked to see Exhibit 8. Mr. Hank asked if the drawing on Exhibit 6 was her property line. Ms. Kim indicated it was.

#### Closing Remarks

Ms. Kim stated she had learned from this process that she is responsible for removing as much snow/ice as possible and then treating with sand/salt. / Mr. Hank stated that they were holding the property owner responsible per city ordinance. He asked that the board not dismiss the charges. Testimony was completed.

#### ARB Deliberation

Ald. Schmidt noted that the board has 30 days within to render a decision but thought the board could start deliberations. No objection was made.

Ald. Phair stated that he thought that the ordinance was clear and that the city contractors came out and did what the city expected property owners to do. The city did what it had to do within the parameters of the ordinance.

Ald. Bidar-Sielaff stated that she agreed with Ald. Phair but appreciated Ms. Kim going through the process. She thought waiving the administrative fee would be appropriate but keep the contractor fee due to the lack of clarity.

Ald. Schmidt asked ACA Mainella what motion options the board had.

ACA Mainella stated that the board had the power to affirm/uphold the decision, reverse it in its entirety or remand to the authority for reconsideration. The board could not change the dollar amount and she would have think about remanding to Building Inspection to reduce the dollar amount.

Ald. Weier, seconded by Ald. Rummel, to remand, with instructions, to the Building Inspection Director to support the contractor fee of \$93.25 and waive the \$50.00 administrative fee.

Ald. Resnick didn't see any purpose in waiving the administrative fee, clearly city staff had to work to get the contractor scheduled, etc...services were provided.

Ald. Schmidt stated that it was clear that the ordinance enforcement was followed; the ordinance itself provided a remedy (see Exhibit 4) for the property owner and therefore he did not see any reason to uphold the appeal by property owner. The only remedy he could see was for that small portion of the neighbor's sidewalk that was salted, which would probably be a very small portion of the ticket.

Ald. Phair made a motion to amend the remand to have the Building Inspection waive the neighbor's salt portion from Ms. Kim's ticket, seconded by Ald. Bidar-Sielaff. Ald. Resnick did not see any benefit in setting this precedent.

Mr. Hank was asked if the fee could be adjusted (Ms. Kim did not object). Mr. Hank stated that he could adjust the fee. / Ald. Shiva Bidar-Sielaff left at 5:40 p.m.

Motion to amend the main motion passed with Ald. Scott Resnick being recorded as voting no.

On the main motion, as amended, to remand the charge to the Building Inspection Unit with instructions to reduce the contractor's \$93.25 salting/removal fee proportionally so that the fee is only for the salting/removal services performed on the portion of the sidewalk adjacent to Ms. Kim's property. The motion passed by the following vote:

Absent: 1 -

Paul E. Skidmore

Ayes: 4 -

Chris Schmidt; Marsha A. Rummel; Anita Weier and Matthew J. Phair

Noes: 1 -

Scott J. Resnick

Excused: 2 -

David Ahrens and Shiva Bidar-Sielaff

## ADJOURNMENT

A motion was made by Ald. Matt Phair, seconded by Ald. Marsha Rummel, to adjourn. The motion passed by voice vote/other. The meeting adjourned at 5:45 p.m.



## Office of the Common Council

210 Martin Luther King, Jr. Boulevard, Rm 417  
Madison, Wisconsin 53703-3345  
PH 608 266 4071  
FAX 608 267 8669

### NOTICE OF DECISION

June 18, 2013

TO: Ms. Kyeog Kim  
4017 Birch Avenue  
Madison WI 53711

George Hank, Director of Building Inspection  
215 Martin Luther King, Jr. Boulevard, Room LL100  
Madison WI 53703

RE: **DECISION OF ADMINISTRATIVE REVIEW BOARD**

This letter is to provide written notice of the decision of the Administrative Review Board ("ARB") in Kyeong Kim's appeal of snow and ice removal charges, held on May 21, 2013. This decision is provided in compliance with MGO 9.49(6)(b)3.

On May 21, 2013 the ARB held a hearing in the above-mentioned appeal. The following ARB members were present: Ald. Chris Schmidt, Ald. Scott Resnick, Ald. Marsha Rummel, Ald. David Ahrens, Ald. Anita Weier, Ald. Matt Phair and Ald. Shiva Bidar-Sielaff. Ms. Kyeong Kim appeared on her own behalf, and Mr. George Hank appeared on behalf of the City of Madison Building Inspection Division. After conducting a hearing pursuant to the Rules of Procedure for Administrative Review Board Hearings, hearing testimony and arguments and receiving exhibits from both sides, the ARB deliberated and rendered the following decision:

The April 9, 2013 determination of the Building Inspection Unit to charge Ms. Kim \$50 plus \$93.25 is hereby **REMANDED to the Building Inspection Unit with instructions to reduce the contractor's \$93.25 salting/removal fees proportionally so that the fee is only for salting/removal services performed on the portion of the sidewalk adjacent to Ms. Kim's property.**

This decision was made by a motion of Ald. Anita Weier, seconded by Ald. Rummel, to remand back to the Building Inspection Unit to maintain the contractor costs of \$93.25 and waive the \$50.00 administrative fee. Ald. Matt Phair moved to amend the main motion, seconded by Ald. Bidar-Sielaff, to remand to the Building Inspection Unit to review and determine any reduction in salting/removal fees to the portion of the appellant's sidewalk and maintain the \$50 administrative fee charge. The amended motion passed by a vote of 4 to 1: Aye votes: Ald. Chris Schmidt, Ald. Marsha Rummel, Ald. Anita Weier, Ald. Matt Phair. No Vote: Ald. Scott Resnick. Absent: Ald. Shiva Bidar-Sielaff, Ald. Paul Skidmore and Ald. David Ahrens.

**Therefore, the Building Inspection Unit is instructed to immediately adjust the charges as described above and take all steps necessary to notify Ms. Kim of the same.**

This decision is made for all of the reasons stated on the record during the hearing and deliberations held on May 21, 2013. Because this matter has been remanded, it is not a final administrative decision for purposes of judicial review. See MGO 9.49(6)(b)3. Minutes and copies of the tape recording of the hearing may be requested from the Office of the Common Council at the address above.

Sincerely,

Ald. Chris Schmidt, Chair  
Common Council Organizational Committee/Administrative Review Board

cc: Lara Mainella, Assistant City Attorney



Department of Planning & Community & Economic Development  
**Building Inspection Division**

Website: [www.cityofmadison.com](http://www.cityofmadison.com)

Madison Municipal Building  
215 Martin Luther King, Jr. Boulevard  
P.O. Box 2984  
Madison, Wisconsin 53701-2984  
FAX 608 266 6377  
PH 608 266 4551

June 19, 2013

KYEONGJA KIM  
4017 BIRCH AVE  
MADISON WI 53711

**Subject: Snow Citation and Removal Charges**

Dear Ms. Kim:

I am writing this letter in follow-up to the decision of the Administrative Review Board after the May 21, 2013 Hearing. The Board remanded the matter to the Building Inspection Division with instructions to reduce the contractor's \$93.25 salting/removal fees proportionally so that the fee is only for the salting/removal services performed on the portion of the sidewalk adjacent to your property. I have enclosed a copy of the decision of the Administrative Review Board. I have also enclosed copies of the photos that were taken to document the adjustment process.

The first photo, 4017 Birch Ave. Post Snow Picture, shows the contractor's salting and snow removal efforts that included a portion of the sidewalk just east of the bush overhanging the sidewalk. The second picture, 4017 Birch Ave. Property Line Picture, shows the property line in relationship to the bush. The property line was determined by measuring in from the adjacent cross streets. The measurement also coincides with the neighbor's fence on the eastern edge of your property.

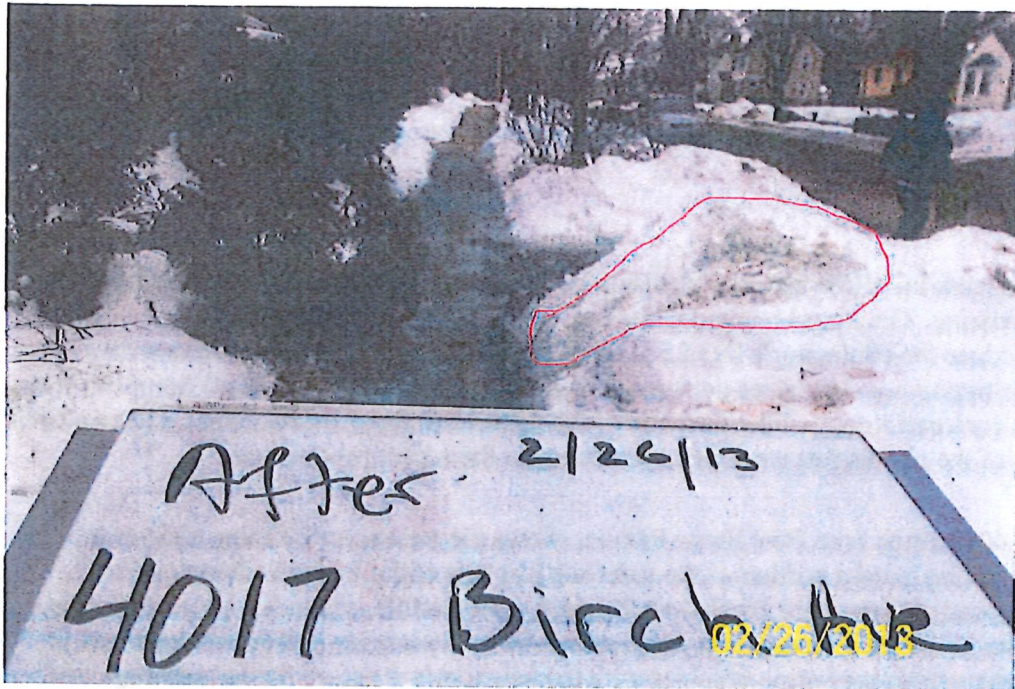
The additional removal efforts appear to cover a portion of one sidewalk square to the east of the bush. Each sidewalk square is approximately five feet in length. So as to remove doubt, we will round this up to a complete sidewalk square. Your property is 50 feet in width. The removal effort by the contractor covered 55 feet. After reviewing the photos and all of the other documentation for this incident, I will adjust the \$93.25 removal charge by removing 1/11th, \$8.48, of the charge, leaving \$84.77

A new bill in the amount of \$134.77 (\$84.77 plus the \$50.00 Administrative Fee) will be sent to you by the Finance Department.

Yours truly,

George Hank  
Director

cc: Lara Mainella, Assistant City Attorney  
Alder Chris Schmidt, Chair, Administrative Review Board  
Members of the Administrative Review Board  
Finance Department  
Building File



4017 Birch Ave. Post Snow Removal Picture



4017 Birch Ave. Property Line Picture



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### NOTICE OF DECISION

June 18, 2013

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4017 Birch Avenue  
Madison WI 53711

George Hank, Director of Building Inspection  
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Madison WI 53703

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This decision was made by a motion of Ald. Anita Weier, seconded by Ald. Rummel, to remand back to the Building Inspection Unit to maintain the contractor costs of \$93.25 and waive the \$50.00 administrative fee. Ald. Matt Phair moved to amend the main motion, seconded by Ald. Bidar-Sielaff, to remand to the Building Inspection Unit to review and determine any reduction in salting/removal fees to the portion of the appellant's sidewalk and maintain the \$50 administrative fee charge. The amended motion passed by a vote of 4 to 1: Aye votes: Ald. Chris Schmidt, Ald. Marsha Rummel, Ald. Anita Weier, Ald. Matt Phair. No Vote: Ald. Scott Resnick. Absent: Ald. Shiva Bidar-Sielaff, Ald. Paul Skidmore and Ald. David Ahrens.

**Therefore, the Building Inspection Unit is instructed to immediately adjust the charges as described above and take all steps necessary to notify Ms. Kim of the same.**

This decision is made for all of the reasons stated on the record during the hearing and deliberations held on May 21, 2013. Because this matter has been remanded, it is not a final administrative decision for purposes of judicial review. See MGO 9.49(6)(b)3. Minutes and copies of the tape recording of the hearing may be requested from the Office of the Common Council at the address above.

Sincerely,

Ald. Chris Schmidt, Chair  
Common Council Organizational Committee/Administrative Review Board

cc: Lara Mainella, Assistant City Attorney

