ABATEMENT APPEALS BOARD
Wednesday, May 18, 2011 at 9:00 a.m.
City Hall, 1 Dr. Carlton B. Goodlett Place, Room 416
ADOPTED February 15, 2012

MINUTES

A. CALL TO ORDER and ROLL CALL.

The meeting of the Abatement Appeals Board for May 18, 2011 was called to order at 9:00 a.m. by President Lee. Roll call was taken by Commission Secretary Ann Aherne, and a quorum was certified.

BOARD MEMBERS PRESENT:
Frank Lee, President
Debra Walker, Vice-President
Kevin Clinch, Commissioner
Reuben Hechanova, Commissioner
Warren Mar, Commissioner
Mel Murphy, Commissioner
Criss Romero, Commissioner

Ann Aherne, Building Inspection Commission Secretary

D.B.I. REPRESENTATIVE PRESENT:
Edward Sweeney, Deputy Director of Inspection Services
Anthony Amable, Plumbing Inspector
John Hinchion, Acting Senior Building Inspector
Teresita Sulit, Secretary

Francesca Gessner, Deputy City Attorney

B. OATH: Commission Secretary Aherne administered an oath to those who would be giving testimony.

C. NEW APPEAL: Order of Abatement

1. CASE NO. 6748: 1429-V Hyde Street

Owner of Record and Appellant: My Stephen LLC, 17888 Cochrane Road,

Morgan Hill, CA 95037

2. **Owner of Record and Appellant:** Stephen Hou, 10130 Lockwood Drive, Cupertino, CA 95014

ACTION REQUESTED BY APPELLANT: Assessment of Costs and Fees imposed by the Order of Abatement be waived.

Testimony, deliberation and possible action to uphold, modify or reverse the Order of Abatement.

Secretary Aherne stated we will hear from the Department first for seven minutes and then the Appellant. Then we will have discussion, and then there is a three-minute rebuttal for each side.

President Lee stated if we could hear from the Department representative first.

Anthony Amable, Plumbing and Boiler Mechanical Inspector for DBI, stated the original notice of violation was written by myself based on an actual physical inspection of the premise on April 19, 2004. At which time, we observed several code violations, which are delineated on the report. We issued letters, followed procedure, and some of these code violations are pretty significant health violations with back flow protection and boiler certification inspection and safety items on the boiler.

Mr. Amable said the owner of the property has had a significant amount of time to contact us. We have sent letters explaining what he needs to do, how to go about getting an appropriate contractor to help him with the work; and today, we have had no inspections, no response. I believe our recommendation is to uphold the Order of Abatement and impose assessment of costs. Thank you.

Vice President Walker stated this is a significant amount of time, what is going on for seven years? I mean, I guess I would ask how come it has taken so long to get to this point.

Inspector Amable stated I can only give you my response, which is beyond the scope of my expertise, other than if you look at the case history, we sent it to the Code Enforcement in 2004 from one Department somewhere in May. After it went to Code Enforcement, I cannot speak to what takes place up there and how come it took so long.

Vice President Walker stated ok, thank you.

President Lee asked has anybody gone back to visit the property since 2004?

Inspector Amable stated no, we have a response that says there were plumbing permits which we required be pulled, but plumbing permit in its description and scope mentions nothing about the removal of the boiler, for which we require a permit and inspection, and that particular permit had no case history of any inspections being done.

Vice President Walker asked so it is inactive?

Inspector Amable stated it is long since expired.

Vice President Walker asked what led to the 2004 inspection?

Inspector Amable stated probably the City had some records either from the Back Flow Department, from the Health Department, or we had records to indicate there was a boiler on the premises, and it did not have a valid or current permit to operate. At which time, when I was first hired on, that is primarily what I did was to go out and inspect various boiler rooms to see if they complied and if they did not comply to write the notice of violation.

President Lee asked is there usually routine inspections of boilers?

Inspector Amable stated the actual requirements to have a routine inspection and a permit to operate is the responsibility of the property owner, and it is up to them to hire a licensed C-4 contractor. They do the physical inspections, submit the report to our Department, and we issue the permits to operate but as far as enforcement goes, then that falls on our shoulders to do enforcement.

President Lee asked if the Commissioner's had questions? Ok, to the comment. Appellant, you have seven minutes.

Stephen Hou, son of the owner, stated a lot has transpired. In 2004, when we got the notice, I think it was late 2004 or 2005, the apartment caught fire, so there was fire damage, and everyone was out of the building for several years.

Mr. Hou said at that time, when we remodeled or had to rebuild the whole thing, we demolished the fire damage and everything else, they demolished the boiler as well at that time back in 2005 and it did not exist. I told one inspector when we first got the notice that it is not operational right now. I cannot give a permit inspection because the building is not occupied. No one is using it. There was no usage of the boiler at all because it was unoccupied. Since then, my dad was in charge and passed away, then my brother has passed away, so a lot has transpired since then.

Mr. Hou stated we just barely got the building back online now but the boiler was removed back in 2005. I talked to the inspector when I called them up, and he said to send an e-mail, and I did and did not hear a response, so when I got the first court date, I said that the boiler was not there, and I talked to the inspector, and he said I just had to send in some information saying the thing was gone, so I assumed I did not have to show up for this one and now I got this one. The boiler is not there. Nobody bothered to call me up to get an inspection to see if it was there or not. It has not been there for five or six years. I do not have a boiler there. There is nothing to abate, it has been gone.

Vice President Walker stated the Department does not have any record that there was any

inspection of whatever the permit for the Plumbing was at that time. My question is if you have done a rebuilt after the fire, what is the current heating source?

Mr. Stephen Hou stated it is a water heater.

Vice President Walker stated ok.

President Lee stated any other questions, Commissioners?

Commissioner Murphy stated Deputy Director Sweeney, explain a bit more to me what is going on.

Vice President Walker stated that comes as rebuttal.

President Lee stated we will go to the Appellant first and then we will talk to the Department again. Any other questions for the Appellant? I have a question. My understanding is that there was a fire and you rebuilt the building, changed the heating system.

Mr. Stephen Hou stated the fire next door and it took part of our roof off and everything. The place was vacated.

President Lee stated you must had permits to…

Mr. Stephen Hou stated we had a demo permit and building permit and have design, planning and went through everything.

Vice President Walker asked what is the current heating system because the boiler was a heating system, an electric? The Appellant stated yes.

President Lee asked that was indicated in your construction project?

Vice President Walker stated that is permitted? The Appellant stated yes, I think so.

Commissioner Clinch asked a similar question, was the boiler for domestic hot water supply or was it heat as well? Stephen Hou stated it was both. Since that was the case, when we had the fire, we just demo the whole thing.

Commissioner Clinch stated when you did the rebuild after the fire, the heating system was installed and a domestic hot water supply system was installed that was part of the building permit? At the time, there was no reminder of an outstanding violation?

The Appellant stated no, because there was no violation. I told one of the inspectors back then that the boiler was put down and removed. I did not realize that I had a violation at that time. There was no violation because the boiler is not there anymore. How do you get fined for something that the trouble is not there? I mean, the boiler is gone.

Commissioner Mar stated because the apartment building was vacant after the fire and because it was reoccupied, was there a final inspection, and was that passed before occupancy took place? It is not occupied now? The Appellant stated I have finals coming up pretty soon.

Commissioner Mar stated the construction is still going on? The Appellant stated yes, had a lot of family issues when my father and brother passed away.

Commissioner Mar asked it has been vacant since 2005? The Appellant stated yes.

President Lee stated so the construction permit has not been completed yet? The Appellant stated no, I still have the permit out on it.

President Lee stated no more questions, Commissioners? Any public comment? Ok, no public comment. Could we have the Department back up for rebuttal?

Inspector Amable stated he certainly understands the Appellant's frustration. It is a simple matter, and we made this clear through our communication. You can remove a boiler, but you need a permit to remove a boiler. We will do the physical inspection to make sure the cross connection has been eliminated and the gas lines are properly secured, and we will abate the complaint as simple as that.

Inspector Amable said going beyond that, to install a new source of heat, particularly gas heaters because that is our purview. Gas heater and water heaters, we need additional permits for the new equipments. As of date, I have no permit indicating that they are installing any of those equipments. I have no inspection history of any physical inspection for any plumbing or heating pertinent devices for this property. All I have is a permit here that says replaced waste pipe damage from fire and there is no permit history on that permit and is long since expired.

Vice President Walker stated so if I go to the online side and look at the history, there will be no permit for either a new heating system or a removal of the old one?

Inspector Amable stated based on the staff report that was given to me and presented here today, that is my understanding. There is no history of any permits for any of this work. There may be some misunderstanding. The Appellant might have been under the belief that his job card covered this work, but it is clearly indicated on the job card that separate plumbing permits are required.

Vice President Walker stated thank you.

President Lee asked Mr. Hou, did you have anything else to add? Stephen Hou stated I did not mean it like that but I had to go up to the Building Department and renew my existing building permit to get the parking passes that I had. I know I did that, and I paid them something, so I do not know what that is. They looked up the files and said that they updated the permits, and I supposedly paid the fees on it to get my parking permit and everything. I do not know what I can say. If I need to pull some more permits out for the plumbing permits, then I will have to do that.

Mr. Stephen Hou stated I thought that was included. I thought that was in the original building permit.

Commissioner Murphy asked are you a general contractor? The Appellant stated yes, I am.

Commissioner Murphy stated I think a general contractor should know to pull separate permits.

Mr. Stephen Hou stated I am an electrical contractor and have a general license. I do not act as a general very often and I am not a general contractor. I have the license, but I do not utilize it as my source of income. I am more of an electrical contractor. I thought it was included since they pulled the permit for the whole building.

Vice President Walker asked do you have a contractor on this job? The Appellant stated no, I am just doing it myself and that is why it is taking so long.

Commissioner Mar stated I think he answered the questions from the two previous Commissioners. Thank you.

President Lee stated thank you Commissioners.

Vice President Walker stated it seems pretty clear from the presentation that the permits necessary for the work done were not drawn and I understand the frustration, but I think that it is our job to actually support the proper process of getting permits, and when that does not happen, that is why we get here.

Vice President Walker said maybe what the BIC could do is figure out the time necessary for actually taking the permits out and doing the work. I support the staff's recommendation in this, so maybe we could figure out a timeframe of enacting it or implementing it like we do sometimes. Do you have a sense of what it would take to implement and correct this problem?

Inspector Amable stated he thinks at this point, at the very least, we need to get the appropriate permits pulled, and we probably need to do a cursory initial inspection to see to what extent the work has proceeded without a permit. We do not know how much work has been done up to this point without permits and knowing that he is an electrical contractor, he is clearly aware that electrical permits are separate from job cards, so there could be a significant amount of work that has already been done that has not been seen, that has not been permitted. He could pull a permit online in a day. I would not give him more than 15 days to pull a permit and get us out there to see what is going on.

Attorney Gessner stated the notice of violation in front of you right now and pertains to the previous boiler so I believe to abate that violation. What he needs to do is to pull a permit for the removal of the boiler that already occurred. For the new system, that is not really before you at this time.

Vice President Walker stated ok.

Commissioner Murphy stated they would need to pull a permit for that particular boiler only and get that abated?

Attorney Gessner stated for the removal of the boiler that already occurred.

Commissioner Murphy stated he should get that abated and it is for the removal of the boiler which already occurred without a permit.

Vice President Walker made a motion, seconded by Commissioner Murphy that we uphold the staff's recommendation, uphold the abatement and give him 30 days to resolve this issue.

Attorney Gessner stated the motion is for a 30-day advisement to abate this violation. If it is not completed within 30 days, the Order of Abatement will be recorded, and assessment of cost withheld.

Vice President Walker stated ok, well said.

President Lee asked do we have a second? I guess Commissioner Murphy seconded.

Secretary Aherne stated we will take a roll call vote. The Commissioners voted on follows:

President Lee	***Yes***
Vice President Walker	***Yes***
Commissioner Clinch	***Yes***
Commissioner Mar	***Yes***
Commissioner Murphy	***Yes***

The motion carried unanimously.

President Lee stated you have one month to get your permit and get it resolved.

D. CONTINUED APPEAL: Order of Abatement

3. **CASE NO. 6733: 5 Seymour Street**

   Owner of Record and Appellant: Margaret D. Nelson, 5 Seymour Street, San Francisco, CA 94115

4. **Owner of Record and Appellant:** Winston W. Montgomery, 5 Seymour Street, San Francisco, CA 94115

ACTION REQUESTED BY APPELLANT: Needs more time to finalize the permit.

Note: The AAB first heard this matter on May 19, 2010, and held a continued hearing on November 17, 2010. Continued for hearing today.

Testimony, deliberation and possible action to affirm or reverse the Notice of Violation and/or to impose, or modify the terms and conditions of the proposed Order of Abatement.

Secretary Aherne stated we will allow three minutes for each side for the updates. Do we have someone from the Department first?

President Lee stated yes, could the Department please come forward and give us a brief update of what is happening?

John Hinchion, Acting Senior Building Inspector of Code Enforcement at DBI, stated the address 5 Seymour Street, Appeal Case 6733, as was mentioned, this case was previously heard on November 17, 2010, continued to today. The violation, dormer type roof constructed of a north elevation without a permit.

First and second notices of violation were issued on December 3rd of 2009, an Order of Abatement was issued with conditions 30-days to file permit application to legalize or remove dormer roof, plan review time limit, 10 days to pick up approved permit and 30-days to complete with final approval. There was a permit issued and filed in June 12, 2008, that was Permit Application No. 2008-0612-4326 and since our last appeal hearing, that permit was issued on January 27th of this year. Because of all the staff time we have invested in the case, we would still hope that you would uphold the Order of Abatement and impose the assessment of costs. That is our report.

President Lee asked any questions? No questions from Commissioners? Ok, the Appellant.

Mr. Winston Montgomery, Appellant and owner with his wife, stated the good news is that we have been issued the permit. It has been my contention all along that the assessment of costs is unfair because I have made what I believe to be a reasonable and appropriate progress to get this permit.

Mr. Montgomery said as Inspector Hinchion said, he first applied for it in June of 2008, and I have sort of a timeline here. It has been a long time, but I think the process is so slow that that is really how long it takes. I was issued the first notice of violation on February, 2008 and the second notice on June, 2008. I filed for the permit that same month on the 12th and so the notice of abatement costs came after I had filed for the permit so that is why I think it is unfair that the notice was given to me while I already had a permit filed.

Commissioner Murphy asked when you file for the permit, do you have to have a plan drawn

up and submitted to Planning? The Appellant stated certainly. I went through the whole process. Since it is an old house, I had to go through the Planning Department and get a historical review. I had to answer two letters of requirements from Planning. Then, I was passed to Planning and then my neighbors applied for a DR design review to oppose that the Planning Commission's permission that was settled finally in September of 2010. It went back to the Building Department and was finally issued in January 27th of this year.

Mr. Montgomery said as soon as the rain stops, I will correct the problems I have. I have already paid and this is related to a neighborhood disagreement. I have already paid $1,000 costs for a related issue. We share an alley, and I cannot get in that alley without their permission to take care of another violation, so I paid that just because there was no way I could correct it, but again, my contention is that I tried to get my permit to correct the violations, and it was primarily the slow process of the City which kept me from accomplishing that.

President Lee stated Commissioners, anymore questions?

Vice President Walker asked this flow essentially from the initial work without permit? Just to be clear? The Appellant stated yes, it was 25 years ago, but, certainly, you are right. It did flow from that point.

President Lee stated ok, thank you. No other questions? We will take public comment. No public comment? Ok, we will go back to the Department for a quick rebuttal. There is no rebuttal. Ok, Commissioners?

Vice President Walker stated very happy that this is coming to a resolution. I am sure all parties involved are. My sense is that the initial violation, as I sort of pointed out, stems from work without a permit. I think that is fair there may be penalties should not accrue on this, but it seems that the initial abatement proceedings or the initial violation was because the work was done without a permit that needs to be resolved, I would make a motion to uphold the abatement and maybe again allow time to effectuate the permit and support the staff's recommendation and move it forward.

President Lee asked what is the length of the permit? How long is it?

Inspector Hinchion stated general permits are a year at least, but normally when there is a Code Enforcement case, the timeline is set by the Code Enforcement process. Even though the permit might have a normal three-year life span, our process, because there are violations involved, could dictate that it would be done in a shorter period of time.

Commissioner Murphy asked what are the fines up to date that he applied for the permit to Planning?

Inspector Hinchion stated the initial fee at this point is $1,050.

Commissioner Murphy asked some of that have come after that date?

Vice President Walker asked some of the penalties?

Inspector Hinchion stated there are no penalties that we would assess. We would simply assess whatever time we invested in the case, though there will be more time since then for the preparation of the Order of Abatement and the posting, but as for now, $1,050 is the initial fee.

Commissioner Murphy asked why would time be spent on it if staff knew that he had already filed for the permit?

Inspector Hinchion stated if you look at the timeline here, the first notice of violation was issued on February of 2008 and no action was taken whatsoever by the owner. A second notice was issued on June 4th of 2008, and it was only then after the second notice that the permit was filed a few days later on June 12th. Because they filed that permit, we stopped the Code Enforcement process, to give them a chance to get that permit issued and no further progress took place. Then, it was a result of that lack of action that we scheduled a hearing for December 3, 2009.

Inspector Hinchion said it was since then, as we went through this process that finally the permit was issued on January 27th. If we did not schedule this case for a hearing, maybe the permit may not have been issued. It may have originally been filed just to stop our process and that is just my speculation.

Inspector Hinchion stated clearly, this shows that through our Code Enforcement process, no action was taken and you go to the next step. Another action is taken and now we are at least at the point where the permit is issued. Hopefully, now that it is issued, the work will get done and we will have a final sign off. Sometimes a permit can be issued and it may just lay dormant without any work being done and it can expire. I would hope that would not happen here.

Commissioner Murphy stated I understand. I do have a question for the Appellant. Did Planning approve the dormer as it is? I have seen pictures the last time.

The Appellant stated there are two windows we have to change. We have to remove one and change another and bring it back 6 feet from the front of the house. There are changes that have to be done.

Commissioner Murphy stated my second question is, how long is it going to take for you to get this finished, get it cleared up and signed off?

The Appellant stated well, it is not a very big job, frankly. It may be three weeks of work. It just depends. I am going to do it and I am hopefully going to do it in June.

Commissioner Murphy stated I am asking you how much time you need to do it. I do not want to be back here three months from now talking about the same dormer.

The Appellant stated well, if I can have three months, I do not know who is available. If I could have a rebuttal, I do not understand. I am willing to pay the assessment of costs and then go back into the pool where I have the regular permit process where I have a year to complete it. I

am not going to take a year and I want this off my plate, too. But I do not see why we keep putting limits on my work beyond the normal process. I could see it up to this point, because I was appealing that assessment of cost. If you find that I should pay those costs, I am expecting or hoping that I will pay those costs and then I will have a typical permit with a year to get the work done.

The Appellant said he did not agree with Mr. Hinchion. I can see the notice of violations as warnings to do the work. If the permit expires, the permit expires. He is looking over my back to prod me on. I do not understand the way he represented his role.

The Appellant stated in the Order of Abatement, it said the Director hereby orders the owner of said building to comply with the following: 30 days to file a permit which I already had filed and this is done in December so I filed in June. It also says comply with plan review and time limit of 10 days to pick up the permit, 30 days to complete all work including final inspection. All of that is impossible to me.

Commissioner Murphy stated he has to represent the Code Enforcement.

The Appellant stated I can see his role all the way up to the point where I have my permit then I am within the codes. I will certainly submit to whatever you want me to do.

Commissioner Murphy stated I am trying to help you here and giving you some time and you are telling me that you want to drag it on for a year?

The Appellant stated no, that is not what I am doing. What I am saying that this permit gives me a year to complete the work and that is how I understood it. I am not a licensed contractor and I do not think it is fair to be limited to three months.

Vice President Walker stated because you are here before us and it is our job to make a decision about what to do with this case, I move that we uphold the staff decision and give him 90 days to implement or execute the permit and then hold it, get the legal language.

Commissioner Murphy stated get it signed off.

Attorney Gessner stated complete all work including final inspection. The Order of Abatement that you are reviewing originally gives a 30 days to complete all work and obtain a final inspection after obtaining the permit. So you would be providing 90 days from today's date.

Vice President Walker stated correct.

Commissioner Murphy stated ok, I will second that motion.

Attorney Gessner stated the motion is to uphold assessment of costs that were imposed up until the time that the permit was applied for?

President Lee stated so let's get it straight. 90 days from today? You would be providing 90 days from today's date.

Vice President Walker stated yes.

President Lee stated 90 days from today.

The Appellant stated yes. I mean, there has to be some process that is consistent. I do not see that this is, but I won't go into it. Thank you very much and I will complete the work in 90 days.

Vice President Walker stated do we have a second on that? **Commissioner Murphy** seconded.

Attorney Gessner stated Commissioners, just a clarification on motion of cost. I believe the Department stated they were $1,050 as of the date the permit was applied for, but there are additional costs since that time and I am not sure about the motion.

Vice President Walker asked can I get clear on the additional costs? I would initially try and go back to that amount. It is significant.

Inspector Hinchion stated my understanding is that before you today is to uphold the Order of Abatement and to approve the assessment of cost that has been assessed to the date of the hearing. Any other costs since then I would assume would be dealt with when we do our final fees. My understanding is it would not be under this.

Vice President Walker stated the cost assessed to this date is $1,050.

President Lee stated I will allow one minute.

The Appellant stated it is just that the assessment of cost issues in any fine or any assessment of costs is some accounting as to what the costs are for, hours spent, people spent, and there is nothing in this case. If I am going to pay $1,000 or more, I would like to know for what I am paying. I think it is only fair. Thank you.

Inspector Hinchion stated we would be happy to give him a breakdown of any of those costs.

Vice President Walker stated thank you.

President Lee stated we are back to the original motion of 90 days and assessment of cost.

Secretary Aherne stated we will take a roll call vote. The Commissioners voted on follows:

President Lee	***Yes***
Vice President Walker	***Yes***
Commissioner Clinch	***Yes***
Commissioner Mar	***Yes***
Commissioner Murphy	***Yes***

The motion carried unanimously.

E. PUBLIC COMMENT

Secretary Aherne asked if there was any general public comment relating to the Abatement Appeals Board? Seeing none, we can move to adjournment.

F. ADJOURNMENT

Vice President Walker made a motion, seconded by Commissioner Murphy that the meeting be adjourned. The motion carried unanimously.

The meeting was adjourned at 9:49 a.m.

Respectfully submitted,

_____

Serena Fung, Secretary

_____

Edited by: Sonya Harris, BIC Secretary