



ABATEMENT APPEALS BOARD
Wednesday, April 17, 2013 at 9:10 a.m.
City Hall, 1 Dr. Carlton B. Goodlett Place, Room 416
ADOPTED June 19, 2013

MINUTES

A. CALL TO ORDER and ROLL CALL.

The meeting of the Abatement Appeals Board for Wednesday, April 17, 2013 was called to order at 9:10 a.m. and a roll call was taken by Commission Secretary Sonya Harris, and a quorum was certified.

BOARD MEMBERS PRESENT:

Kevin Clinch, President
Myrna Melgar, Vice-President
Frank Lee, Commissioner
Warren Mar, Commissioner
Angus McCarthy, Commissioner
Dr. James McCray, Jr., Commissioner
Debra Walker, Commissioner (Excused)

Sonya Harris, Building Inspection Commission Secretary

D.B.I. REPRESENTATIVE PRESENT:

Edward Sweeney, Deputy Director of Permit Services and Secretary to the Board
Rosemary Bosque, Chief Housing Inspector
John Hinchion, Acting Senior Building Inspector, Code Enforcement Division
Teresita Sulit, Secretary

Jana Clark, Deputy City Attorney

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

C. APPROVAL OF MINUTES: Discussion and possible action to adopt the minutes for the meetings held on December 19, 2012 and February 20, 2013.

President Clinch made a motion, seconded by Commissioner McCarthy, to approve the minutes of December 19, 2013 and February 20, 2013.

Commission Secretary Harris called for public comment on the minutes and there was none.
The motion carried unanimously.

- D.** Discussion and possible action to adopt the rule regarding Requests for Continuances that conforms to San Francisco Building Code Section 105A.2.6.

PUBLIC NOTICE: MEETING TO CONSIDER THE APPROVAL OF ABATEMENT APPEALS BOARD RULES REGARDING REQUESTS FOR CONTINUANCE IN ACCORDANCE WITH THE SAN FRANCISCO BUILDING CODE SECTION 105A.2.6

At its regular meeting on April 17, 2013, City Hall Room 416, at 9:00 a.m., the Abatement Appeals Board will consider approving rules regarding requests for continuance. For good cause shown, one continuance of a Hearing may be granted by the Abatement Appeals Board; such continuance shall not exceed 60 days. Attached to this notice are the proposed rules regarding Appellants requesting continuances to the Abatement Appeals Board, and the Board will consider this matter at its April 17th meeting. For questions pertaining to this item, please contact Terry Sulit, Abatement Appeals Board Recording Secretary at (415) 558-6267.

ABATEMENT APPEALS BOARD PROPOSED RULE FOR CONTINUANCES

Pursuant to San Francisco Building Code Section 105A.2.6, at the request of any party, the Abatement Appeals Board (“AAB”) may grant one continuance for good cause shown at the time of the hearing. Such continuance shall not exceed 60 days. Upon written request in advance of the Hearing date, such continuance may be granted by the AAB Secretary with the approval of the AAB President and the concurrence of all parties to the Appeals and the head of the Department which rendered the challenged decision or her/his designated representative. A request for continuance that is opposed by one of the parties to an Appeal or by the head of the Department which rendered the challenged decision may be granted only with the approval of a majority of the members of the AAB present at the public hearing on the matter. The AAB will grant a request for continuance made at the time of Hearing if there are fewer than four members of the AAB present.

Commissioner Lee wanted to discuss the proposed language to officially have the President grant the continuance instead of the Secretary. City Attorney Clark said the Board could propose and adopt different language.

Commissioner Lee said the Secretary should be in communication with the President when setting the Agenda but should the President and not the Secretary grant the continuance? Deputy City Attorney Clark recalled as written now, a request can be granted with the approval of the AAB President and logistically the request came before Secretary Sweeney and in the past when the Department had no objection, they contacted President Clinch. If he concurred and approved, Secretary Sweeney would grant the request; however, if the Department objected or President Clinch disagreed, the Appellant would have to come before the full Commission to request the continuance.

Commissioner Lee proposed that the language reflect the continuance be granted by the AAB President through the AAB Secretary. BIC Secretary Sonya Harris clarified this referred to the AAB Secretary Edward Sweeney. Ms. Clark said the Department would concur on a request with the approval from President Clinch and followed by AAB Secretary Sweeney to inform the

party their continuance was approved. President Clinch asked if he agreed with that proposed language. Commissioner Lee made a motion to change the proposed language and Secretary Harris said the motion would be to adopt the rule regarding the request for continuances that conform to Building Code Section 105A.2.6.

Commissioner Lee agreed with the language “pursuant to Building Code Section 105A.2.6, at the request of any party, the Abatement Appeals Board may grant one continuance for good cause shown at the time of the Hearing and such continuance shall not exceed 60 days.” He proposed to change the following sentence: “Upon written request in advance of the Hearing, such continuance may be granted by the AAB President through the AAB Secretary and the concurrence of all parties to the POs and the Head of the Department which rendered the challenged decision or his/her designated representative a request for a continuance that was opposed by one of the parties to an appeal or by the Head of the Department which rendered the challenged decisions may be granted only with the approval of the majority of the members of the AAB present at the public hearing on the matter.” The second half meant that if one of the parties disagreed with the continuance it would come before the full Board.

Deputy City Attorney Clark believed it would continue to operate in the same way except she wanted to ensure the party would not contact the President directly without the benefit of working through Secretary Sweeney for the request and for him to contact President Clinch. If President Clinch and the parties concurred, Secretary Sweeney could grant the continuance which may be better logistically. Vice President Melgar said actually it protected President Clinch when going through the Secretary first and with the full approval from the President who had full control but the staff could conduct the administrative work.

Deputy City Attorney Clark said the change was basically how the Board had operated and the only change from past practice was to ensure that the rule conforms with the Building Code in that only one continuance for good cause can be granted and cannot exceed 60 days. President Clinch asked if it was better clarity the way it was currently written or Commissioner Lee’s proposal? Commissioner Lee decided to leave it to the Board’s decision and President Clinch thought it read fine and made a motion to approve it as is.

There was no public comment.

President Clinch made a motion, seconded by Vice President Melgar, to approve the language of Building Code Section 105A.2.6 as it was written.

Commissioner Mar said he had no problem with what was written but in terms of proper notice on the request, if the person asked for a continuance and the Board was not given sufficient notice then they should consider a requirement on the notice section. When it was on the Agenda without sufficient notice to interested parties or neighbors that a continuance was granted, there would be no opportunity for them to attend and he would not mind granting the continuance if there was a responsibility to post the notice to notify the interested parties for the revised Agenda to allow their presence and testimony. President Clinch believed they should not grant the continuance once an item was placed on the Agenda and Commissioner Mar agreed.

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Ms. Clark discussed the rule’s flexibility and if it came in at the 11th hour and was communicated to President Clinch, presumably the reasons would also come. If it was because of a major medical emergency excuse they could not attend it can be communicated.

Ms. Clark said at that point, it was up to President Clinch but in practice the Board could consider the reasons in particular with respect to the 11th hour request and she would be hesitant to set a rule that disallows flexibility. In practice, keep in mind that it would be difficult for someone to take advantage of the system and the rule allowed for flexibility. If there were invalid last minute emergencies the Department would ultimately object with the President’s disapproval.

Rosemary Bosque, Chief Housing Inspector, believed it would be resolved if it was on the Agenda, a Director’s Hearing posted and a request for continuance was granted to immediately take their testimony especially when there was insufficient notice given for the opportunity to return. Commissioner Mar agreed.

Commission Secretary Harris called for a roll call vote.

<i>President Clinch</i>	<i>Yes</i>
<i>Vice President Melgar</i>	<i>Yes</i>
<i>Commissioner Mar</i>	<i>Yes</i>
<i>Commissioner McCray</i>	<i>Yes</i>
<i>Commissioner McCarthy</i>	<i>Yes</i>
<i>Commissioner Lee</i>	<i>Yes</i>

The motion carried unanimously.

E. NEW APPEALS: Order of Abatement(s)

In the beginning of the proceeding, the Department and the Appellant each had 7 minutes to present their case and 3 minutes each for rebuttal, discussion and public comment.

1. CASE NO. 6775: 481 Minna Street

Owner of Record and Appellant: Nikita Holdings LLC, 579 O’Farrell Street, San Francisco, CA 94102

Agent for the Appellant: Robert Noelke, 1019 Howard Street, San Francisco, CA 94103

ACTION REQUESTED BY APPELLANT: The Appellant has requested three (3) to six (6) additional months to complete the required code abatement work cited.

NOTICE OF DECISION: At that time, the AAB voted to continue the matter to the next hearing date, which was scheduled and continued on **May 15, 2013** at 9:00 a.m., City Hall, 1 Dr. Carlton B. Goodlett Place, Room 416.

Rosemary Bosque, Chief Housing Inspector, said this was the Auburn Hotel which had a long history of not being properly operated as far as the maintenance of the building was concerned. Unfortunately, it was a revolving door of violations somewhat similar to the Grand Southern Hotel where they filed a lawsuit to enforce the owner and the owner's agent to properly run the hotel. The good news was there were several active building permits and other permits for work at this property and her colleague, Mr. Noelke, will speak very eloquently about that but the concern was that this large hotel had 78 guest rooms with 29 tourist and 49 residential rooms and about 20-30 occupants in this building which was the size of a large apartment building or a mid-size residential hotel.

Inspector Bosque said the problem was they had been at this for awhile. They started renovations without the proper containment for lead and had an issue of asbestos cited by the Health Department. They currently added about 9 months on renovations of the building yet when the Housing Inspector was recently at the site from mid to late February, some of those rooms were unfinished to allow the residents who lived in dilapidated conditions and the other rooms to relocate into those rooms. She gave a brief history with deep concern for staff and recommended this request should be denied and asked for referral to the City Attorney's Office because of the revolving continuous nature of these Violations.

There were several Notices of Violation which taken the issue one step further of operating this hotel which was not a good way to do business. They did a room to room inspection of this building in September of 2010 and that particular Notice of Violations was posted in July of 2011. In April of 2012, about 9 or 10 months later, they went back to the hotel for another room to room City Attorney requested Task Force inspection which resulted in a 15-page Notice of Violations in May of 2012. Generally on a room to room inspection, it delivered a message to the property owner that they needed special compliance for the operations of the hotel but the property owner or the operator failed to get that message.

Inspector Bosque said staff was aware that they have changed operators and it had been awhile. About 10-12 months later, they realized the operator made no improvements and they were very concerned about the changes and conditions of the tenants. From that standpoint, they strongly recommended the request for additional time should not be given and an Order of Abatement be issued on the property to encourage them to move forward but the improvements needed to happen for the operation of the building on a daily basis.

Chief Inspector Bosque presented some photos of conditions of painted over sprinkler heads that had been there for awhile and while this particular room was renovated, not all the rooms have been. In the last year or so, no tenants were relocated to any of the renovated rooms where renovations had occurred and the last inspector was at the site on February of 2012 can testify. Some of the renovated rooms were unfinished and needed substantial progress in the right areas and they were concerned that not a flurry of activities where it was not addressed on the living conditions of the tenants in the building.

Richard Stratton, Attorney for the Appellant, Nikita Holdings LLC, said Chief Inspector Bosque reiterated the fact that this building had a very bad history and presented a very quick overview of the context of the work that was done and introduced the contractor regarding his progress as

well as the owner's agent, Robert Noelke. The brief history of this building began when it was under a 20-year lease with a prior operator that ended in January of 2012 and it was a mess. About a year ago, the Task Force Inspection documented the conditions in which was left by the previous operator who at the end of his lease chose not to make any upgrades of any kind whatsoever.

Mr. Stratton said when the owners took possession a year ago in January, Mr. Vishnu Shah was the new lessee and was present at this Hearing, as well as two representatives of the owner and the owner's consultant, Mr. Noelke. The new work commenced last year but after the Task Force's inspection, it was concluded there were too many issues and not feasible to renovate each room but apparently required total renovation. While it was underway, one-third was done and about a third of the \$600,000 cost was spent and that was why the Appellant was here to request more time.

Mr. Stratton said essentially he had much of the documentation before the Board as was part of the old bad news and showed a simple graphic chart with green color that showed completion and the red color showed work to be done. He pointed out that there were numerous categories that went far beyond the scope of the original and this chart was very detailed. He could not go into details but simply wanted to note as far as the tenants, they had a 4-phase process underway with 24 occupied rooms and the rest were vacant. They will be moved to the completed rooms which should be absolutely final and completed within the next two months. He introduced the contractor, Larry Wong, WNGS Construction, to briefly comment on what was done, and why they needed more time.

Larry Wong, General Contractor of WNGS Construction, said the work began in August of 2012 primarily for the electrical portion of these violations. There was about one month of progressive work before they were ordered to stop and it took about 3 months for the inspection of the lead abatement inspection, abating and testing results. They immediately continued work after the test results which they found the lead was insufficient to harm anyone. In December of 2012, the owner gave him a thick packet of violations and asked for his opinion. The building was occupied by not so ideal tenants who urinated on the walls, and defecated in the sink. The drawings were all over the walls and by repairing these items, the odors and stains would reveal themselves in about two years. He recommended replacement over repairing these items which would be guaranteed for at least 20 years.

The owner agreed and on December, 2012 he obtained the permits for the remainder of the renovations. The permit was to comply with all the Notices of Violation in his violation packet and he had records on the permits that all the violations will be completed. During the past months, they realized that it was more than just replacing a fixture and a sink because they removed the walls to change the drainage system or water lines and it apparently took more time. For the past 4 months, he estimated the electrical work and window installations were about 45 percent done of the building and not the violations, about 25 percent of the plumbing work and only 10 percent of the building work was done. The reason for this was the building work actually occurred at the end of the project where finishes were installed and currently about 30 percent to completion. He disclosed their progress and estimated about a year to complete and there were volumes of work to be done. About two weeks ago a female Electrical Inspector

visited the site and found there were no issues, but they worked together with the inspectors in compliance with all their comments.

Robert Noelke, Appellant's Agent, said in the last few months, Inspector Steve Hajnal went numerous times to the site as well. On this property there are Notices of Violation of 93 separate items, some in the public areas and some in the rooms. The public area items were generally cleared and taken care of but they were stop gap or temporary solutions and anticipated it would be redone again once they completed the work through this process.

Presently there were four active building permits that worked under two electrical permits and one plumbing permit. They had a pest control service, a licensed contractor, engineers and an asbestos lead contractor, RGA, new base board heaters ordered for every room for a cost of \$14,500 and new windows that were installed which was not part of the Notice. When they patched these windows and changed the sash cord, it was apparent it did not work so they installed new windows. As the project became bigger, they had to decide if they needed to fix these rooms or comply further with the Notice which took several months. The work was delayed for 3 months and all work was ceased because of the asbestos and lead complaints which were bogus because the only issue was the lead containment and the workmanship but it was all cleared.

They had a new operator in the hotel and in many cases some of these hotels were run down because the operator failed to upkeep the daily maintenances. They have expended on permit fees that exceeded well over \$15,000 and a new water service with the PUC fees of \$8,125 because they needed more pressure. In order to redo the plumbing, they needed more water service and upgraded the bathrooms that were not part of this Notice but provided more bathrooms and remove some of the tourist rooms to provide bathrooms, etc. With these active permits, the point was they operated in goodwill and the time requirement of at least 6 months would require at least a year to finish the project. There were many projects in this building and simply requested that would be one thing if nothing were done and no permits but they moved ahead as quickly as possible and there were back steps in this process.

President Clinch asked for the Department's rebuttal.

Chief Inspector Bosque said Mr. Noelke commented that the containment issue was not a big deal. They started the work while tenants were still living in this building with improper containment and disturbance of lead paint that they were supposed to do and it was not bogus. It affected the tenants living in the building to deal with the issues of having it migrated all over because the work was not started properly. She was concerned and would not deny the fact that there was a lot of ongoing activity but it did not address the living conditions of the people that occupied the building.

There was testimony that the property owner no longer employed the bad operator. If every property owner hid behind a lessee, whether it was a long or short time lessee, they would never get compliance in residential hotels that had lessees. The issue was the property owner should have known because of the Notices of Violation that went to them and what went on in this building and perhaps that should have happened before it did. Their job was to deal with the

minimum standards set by the Housing Code as far as what had not happened in that building for the people residing there and the conditions were bad.

They heard through testimonies that it took time but how much time was needed to renovate rooms on a program basis to move people into the renovated rooms? They were unable to see that not one of those was completed. She did not know what the schedule was but it was certainly not done in a way to address the concerns and the living conditions of the people in the building and that was why staff believed that an Order of Abatement was a fair and prudent action to take to encourage the property owner to continue what they needed to do in this building.

Commissioner McCarthy asked when was the last time the Housing Inspector was on the job site? Chief Inspector Bosque said their last inspector regarding the Task Force Inspection was in mid to late February. They had other open cases where they had inspectors at the site because there were other Notices of Violation that did not have the correct number of bathrooms, etc. On this particular case, February was the last inspection because it was scheduled through the City Attorney.

President Clinch asked for Appellant's rebuttal.

Robert Noelke, Appellant's Agent, said there was a complaint on the lead which was abated and that was why they hired RGA, a lead asbestos contractor and it showed they took care of the job and were proactive. The relocation process on the 24 occupied rooms will take about 4-6 weeks to transfer them from those rooms to new rooms. The Order of Abatement would not serve any purpose except to cloud the title and made it very difficult to obtain a loan when funds were needed to improve the building. They would be happy to work with Chief Inspector Bosque and other Housing inspectors with periodic inspections but they needed more time and it made sense, particularly the fact that they had these active permits.

Commissioner Mar asked if there was a deadline with plans to transfer some of these occupants and because the hotel was partially SRO residential and tourist, how many tourist rooms were renovated? He was concerned that the owner worked only on the tourist side and rented the tourist rooms but had not dealt with the SRO residential which seemed as a financial disincentive to move quickly on the SRO residential.

Attorney Richard Stratton said that was not the case. The entire building was being done in a methodical way and there was no favoring of tourist rooms over residential rooms. The key point was that they were very close to finish completely with rooms where the existing tenants can move into good, clean and brand new rooms with new sinks and everything new and the best estimate from the contractors was about two months.

Many of the problems for the occupied rooms would not interfere specifically with their daily lives. For example, the doors were damaged and the door frames were not good but the door frames will all be replaced after all the rooms were done. The doors, sinks and the plumbing were all functional except everything would be upgraded. It would be useful if the Board would have the ability to defer another few months to review the tenants' progress after they moved in

and it would be useful for the Department to have another inspection and offered them a tour. When looking back, it was a depressing thought but in looking forward, they needed the entire building renovated and completed in order for the entire building to be operated the way the hotel should be operated.

Commissioner Lee wanted more information about their current plans for the renovated rooms, the management and the protection from the construction for the current tenants?

Kong K. Chiu, aka K. K. Chiu, Structural Engineer, said this building was owned by the Patel brothers' father as a first building in the city so the Patel brothers kept the building and there was a 20-year lease that ended beginning last year. At about the same time their father passed away, the brothers took over and the building was in a mess. The Patel brothers decided on total renovation instead of fixing it, which the Department cited, and replaced with new electrical, plumbing, removed and replaced with new sheet rock, new windows, new door frames instead of patched work and a new floor. When it was finished, the building would be renovated.

He advised them to separate the projects into four phases instead of running around to complete the entire building. The first phase was to take care of the existing tenants and also recently installed the carbon monoxide detectors. He proposed the first phase to finish some rooms to relocate the tenants and once they occupied the rooms it would be a new unit which would take about 8 weeks. A second group of 20-25 rooms will at least have a bench mark to check and inspect one group at a time and another 4 months for another group to work on new bathrooms, etc., for completion.

Commissioner Lee wanted more details on the current progress since people were moved from room to room as they were finished, and Commissioner Mar said regardless if they were tourist or SRO rooms he wanted to know the current status of the 78 guest rooms which none were ready.

Larry Wong, contractor, said none of the rooms were currently 100 percent ready and about 30 rooms were almost 80 percent finalized and within two months they can finalized the 30 rooms and moved the 24 over to those rooms. Were they just doing the tourist rooms? There was no designation in which rooms were tourist and they only fixed these rooms so these tenants can shift over. Commissioner Lee clarified that there were 24 occupied rooms and they tried to fix the 30 rooms that were 80% completed and verified by Mr. Wong.

Vice President Melgar asked if his plan was for everybody to relocate once all the 24 rooms were ready? Mr. Wong said once one or two were finalized and signed by the inspectors they can immediately shift people over to finish out. The way these rooms were set up was the plumbing lines ran vertical, setting up for 6 rooms, 2 per floor. They tried to finish at least 4 of those rooms so when the people were shifted over they can finish the whole section.

At this time, there was no one to deal with the tenants on the logistics of moving the tenants when the blocks of rooms were ready and Mr. Noelke said the operator will work with the tenants on this. Vice President Melgar asked if the operator was totally cognizant of the construction? Mr. Noelke said he was there every day with the tenants on this.

Vice President Melgar said it was commented that maybe they can move people as they went along. Was there an actual plan for blocks of rooms that will be finished and specific tenants to move into those rooms and was there prioritization for certain tenants such as an elderly and a plan? Mr. Wong said their plan was, because these rooms were so scattered in a way that they cannot only take out an entire block of the section, they were going to move strategically where they were able to renovate more rooms rather than only specific. Vice President Melgar said on an occupied building, the tenants' needs may be different as a contractor needed to maximize their schedule. She was unclear about it and asked if the lessee or their representative can respond regarding where was that plan and how it fitted into their plan?

Attorney Stratton, Appellant's lawyer, said Mr. Vishnu Shah, the lessee, may answer that. Mr. Vishnu Shah said they worked on schedule and showed them the inspectors' signatures from Plumbing, Building and Electrical Inspectors. Vice President Melgar said she did not ask about the violations but what his plans were to move the tenants to the newly renovated rooms as they became available and his coordination with the contractor to ensure the needs were met besides the construction schedule. Mr. Shah said he posted one sign on the parking area and were 90% finished. If they completed 90% on one side of the rooms, the new tenants would be assigned for Rooms 101, 109 and 111. The doors and the new rooms on the left side for 21 tenants was 90% ready and possibly done. It was different now and he wanted to make sure on the one area it was easy to fix and gave the plans to the contractor.

Attorney Stratton said it should be noted that Mr. Shah lived in a manager's unit and a part of the hotel. There was no incentive on anyone's part to slow down the process of completion. It was their hope to complete from 80 percent to a 100 percent as soon as possible and they have to be signed off by the appropriate City departments. Given the levels of work at these jobs, it will take some time which was why two months were realistic and a conservative effort and everyone will benefit if it was done earlier.

Commissioner McCarthy asked what was the project contract estimate and approximate timeframe for completion? Attorney Stratton said it was clear that when this application was made 3-6 months, the focus was more on the existing 24 tenants. On the scope of the entire project which was done, the best estimate was about a year and would refer to the contractor, Mr. Wong, but with respect to all features of the building it could possibly finished by the end of the year or early part of next year.

Commissioner McCarthy heard a figure of \$600,000? Attorney Stratton said the dollar amount was over \$600,000 and more than \$200,000 was spent with more spent every day. Robert Noelke, Agent for Appellant, said the hotel on the last 24 rooms were not rented and was off the market. Also, there were different phases of the project and anticipated relocating at least 21 tenants which may take about 4-6 weeks. They anticipated several months to renovate the other rooms and updated the bathrooms before final inspection from the Housing Inspectors. Realistically, it may be as much as a year needed to complete this project.

Commissioner Mar said he was unsure about the two months timeframe because if many of the rough plumbing and electrical work were done, these SRO hotel rooms should not take two months to finish a block of rooms unless it was done one at a time and there was not that much

area to do. Mr. Noelke said it took slightly more time with the installation of the appliances which was new baseboard heaters, new sinks, floorings, etc. They worked flat out and anticipated some rooms before that and rented them soon but they have to wait for the required sign off and many unfinished work to do. Commissioner Mar said there were no new residential tenants and Mr. Noelke said there were no rooms rented to tourist.

President Clinch believed there was a lot of ongoing work and many inspections from the Plumbing and Electrical Inspectors. He made a motion to grant an extension to allow the work to continue and will not uphold the abatement and was opened to other opinions.

Commissioner McCarthy said there were boxes that needed to be taken off when making decisions based on the testimony it was taken off and it was not perfect. He was unsure if the Department was involved since February but there were recent contacts with the Building Inspectors which was not their concern. If there were permits pulled, they should have more recent inspection. The timeframe fell apart when dealing with the abatement and not much work were done and tried to mitigate what went on, possibly on February and March. He was happy with the fact that the dollar amounts previously discussed was invested into the hotel. Mindful of the fact, if that kind of money was spent in the hotel, they should support this project and not necessarily holding it back at this stage.

He was concerned, as well as other Commissioners, on the timeframes and as someone from the construction industry, he was familiar with the difficulty to work around people and it can be fast or very slow. Based on the tenants' testimony, he would prefer the timeframes be better. It was good to hear from the operator that three tenants had moved into their new rooms and wanted that verified by the Department and these were signs that showed good faith efforts were done.

In regards to the management and management's company that was fired, that was the message he wanted to hear. He understood that contracts were complicated and difficult to change within but the Commission did not hid behind contracts or penalized people who were before them. Although it was bad management, they passed down the necessary sentence that should be imposed on those buildings and if he rehired the same contractor, his concern would not change. In regards to the testimony, he concurred with President Clinch to continue this and maybe at some point if someone wanted to articulate a timeframe to return with an update.

Vice President Melgar said she was not as convinced as other Commissioners, with all due respect, \$600,000 spent for a 78-unit building with two-third rented to tourists and the possibility to maximize the investment did not seemed very expensive. If their tenants were happy, they would not be here today and a lot of the complaints to the Building Inspection were complaint driven. She believed something had not worked on their planning since their new lessee took over and prior to that it was still their holding to maximize their investment and needed to put some resources into their building. She would not open to grant a continuance and it would not preclude them from continue finishing the work but to prioritize the needs of their tenants before but maximizing their investment with the hopes of renting the tourist rooms at some point and it would add pressure.

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Commissioner Lee had a different opinion and wanted to grant a continuance to allow them at least to hear what the project plans were for the tenants and maybe enforced them to move ahead with that plan to make sure the tenants were protected and relocated to the rooms as soon as possible. He was willing to grant the continuance for a month and have their inspectors monitor what was completed or not, what were the plans for the existing tenants and if they have the new rooms or were they ready to move in the new rooms and what were those plans before he decided on whether or not to uphold the abatement.

President Clinch wanted to hear testimony from the Building or Electrical Inspectors who were at the site and possibly more witnesses would come forward. Commissioner Mar said he was more concerned with the timeframe. If they were to grant a continuance, he agreed with Commissioner Lee about making it 30 days and if they can relocate the 24 tenants in a month and discussed about the other issues which should be the priority. There were many empty rooms and in one month they can make it ready for the 24 tenants and later return to discuss about the rest of the building.

President Clinch asked for any public comment?

Pratibha Tekkey, Central City SRO Collaborative, as the Community Organizer and part of the Housing Clinic, said that she was here before and had many private outreach on SRO hotels. They had been to the Auburn hotel many times over several years and as Chief Inspector Bosque pointed out, they had a very bad history of maintenance problems and difficulties reaching tenants there because many of them were transients and were afraid.

They heard about today's Abatement Hearing and went yesterday but they also did part of collaborative, outreach and private SRO for the lifeline phones. She met with the lessee, Mr. Shah and asked for permission to communicate with the tenants regarding lifeline. He informed them there were only 7 tenants living there and most of them worked so she will not be able to talk to them. In December, 2012, she was informed to contact one of her client in the building to do an outreach. She observed many rooms were boarded up and the conditions were badly maintained and agreed with Chief Inspector Bosque that they should not be allow a continuance. This hotel had a history of incompliance with their requests and was concerned about the tenants' rights and their weak plans.

When tenants moved from one unit into another regardless of the same building, they lose their tenant's rights and can be easily evicted. They had limited access because the owners can refused them and they would not know about this if tenants were afraid and not coming to them. They were not allowed access to the building to witness it and been in this building many times and not seen any diligent effort. Although Mr. Shah was a new lessee, the owner did nothing. Henry Karnilowicz said that he worked with the clients and the owners on many of these residential hotels that were difficult to work with but they had to provide housing. He tried to manage the hotels himself one time and he went fix one of the bathrooms, one of the tenants went to the bathroom and defecated and spread all over the walls and went to his room laughing. There was also a situation where a tenant had a microwave in his room with a pot of maggots inside and it often took more time and complicated to work around these people. There was a lack of maintenance for several years and needed at least 30 days to work on it and not only

plastering. He worked in many of these hotels and knew exactly what went on including one operated by the Tenderloin Housing. The tourists did not want to stay in these places and he urged the Board to continue the case.

Commissioner McCarthy thanked the Tenderloin Housing Clinic for their testimony. He heard their situations and knew of their bad history which was pretty much the outlook into their future will be and as a Commissioner, they were very cognizant of that. From his point of view, he was unsure if the Board would like to continue this; but if they were, they would be able to come back and report to them if the property owner would facilitate the Tenderloin Housing Clinic a site visit to demonstrate the work that went on and make their good judgment there. He wanted to hear from them if they will concur or not which would be very helpful to them and a good compromise if both the owner and the collaborative agreed to do that.

Both Ms. Tekkey and Mr. Noelke agreed to do that and Commissioner McCarthy said that would be stated for the record. Commissioner Mar said if it was continued, he wanted the Housing Inspectors to at least visit the 24 rooms that were occupied and to confirm the occupancy.

President Clinch made a motion, seconded by Commissioner McCarthy, to grant a continuance for one month and have all parties return for an update.

Commission Secretary Harris called a roll call vote on the motion.

<i>President Clinch</i>	<i>Yes</i>
<i>Vice President Melgar</i>	<i>No</i>
<i>Commissioner Mar</i>	<i>Yes</i>
<i>Commissioner McCray</i>	<i>No</i>
<i>Commissioner McCarthy</i>	<i>Yes</i>
<i>Commissioner Lee</i>	<i>Yes</i>

The motion carried 4-2.

City Attorney Clark clarified if it was continued for 30 days or one month because it may make a difference. They could continue to the next scheduled meeting of May 15th and sometimes it moved to two months but she heard it was for a month.

2. CASE NO. 6776: 767 North Point Street

Owner of Record and Appellant: Charles B. Engelberg, 767 North Point Street, San Francisco, CA 94109 and 4 Birdie Drive, Novato, CA 94949

Attorney for the Appellant: David Edward May, 476 Jackson Street, 3rd Floor, San Francisco, CA 94111-1624

ACTION REQUESTED BY APPELLANT: The Appellant is requesting the Director's Order be overturned and requesting the Abatement Appeals Board's assistance in resolving the outstanding code violations.

NOTICE OF DECISION: The AAB voted to continue the matter to the next hearing date of **May 15, 2013** at 9:00 a.m., City Hall, 1 Dr. Carlton B. Goodlett Place, Room 416.

President Clinch said the Department would speak first followed by the Appellant.

Chief Housing Inspector Bosque said this was a single family dwelling and staff wrote a typical Notice of Violation regarding the paint. The Complainant came in on the adjacent property owner and they tried to work with both the property owner, Appellant and the Complainant. From the staff report submittal, there was a history between these two parties. They did not send an immediate notice and tried to work with the parties for two or three months. The Notice of Violation was written in July and did not go to a first Director's Hearing until the following October. The Hearing Officer then granted a 30-day continuance on November, 2012 and there was an advisement and the parties could not agree to make the appropriate repairs. An Order was issued and they were here before the Board with appeal of that Order.

There was some confusion on the part of the complainant regarding the difference between the disturbance of lead paint and the presumption there was lead paint at the subject property because of when it was constructed. The lead abatement was the actual removal of lead base paint which was not what their notice asked for. When dealing with the disturbance of lead base paint, it must be done properly with proper containment using certain tools, vacuuming any paint chips with hepa filter. To orientate the Board, she showed a photograph of the building. On the adjacent property on the North Point, she showed from the rear of both structures an aerial photograph. The area in question was at the rear of the lot and the area cited for peeling paint. This was one of many cases they had when there were no compliance for many months and they forwarded it to an Administrative Hearing as their policy required. When they work on old cases, they made sure they process them through the administrative process and the Board may want to hear from both the Appellant and the Complainant.

Vice President Melgar said she had trouble envisioning this after reading all the various ongoing emails and asked to return to that picture of the wall and wanted to know if the complainant, Ms. Tsang, owned that wall. Chief Inspector Bosque said the wall belonged to the Appellant which the property was cited and she showed the property location of the wall. The complaint was in the adjacent structure that showed the rear and the wall was essentially toward the rear of the property. Vice President Melgar asked on the removal of the trellises on the wall, what were they on? Chief Inspector Bosque clarified it was on the wall of the subject property and the Complainant and Appellant can talk more about that. She left the picture on the projector as they may need it later for discussion purposes.

David May, Attorney represented Dr. Charles Engelberg, property owner, and wanted to orientate the Board of the importance to actually view the walls and the trellises they talked about. He showed a picture that indicated the wall, a light well was on the complainant's property, Ellen Sang and the trellises covered the wall and prevented access to that portion of the wall. In fact there was no access to the wall except either in the airspace or on the ground of Ms. Tsang's property. He showed another picture taken by the Department that was in the Board's packet and the Department's report.

The picture showed the length of the light well and in fact, this was part of the entrance to Ms. Tsang's property on the 769 North Point of the adjoining property. The only way Dr. Engelberg or anyone property owner can paint this wall was by trespassing into Ms. Tsang's property and the problem was prior to the issued Notice of Violation and before there were complaints on this. Dr. Engelberg, the predecessor owner of this property, tried to paint this wall and they did not have it now but will know what wall to discuss. The property owner at 767 North Point Street, whether it was Dr. Engelberg, since 1997 or prior to that wanted to paint this wall because they wanted to maintain this very nice property.

Dr. Engelberg and the prior owner did an extensive renovation of this property and the only portion of the property that was not addressed by the renovation was the wall and it had not been addressed either following or prior to the Notice of Violation because Ms. Tsang, complainant, refused to allow anyone to do it. On Exhibit 1 of their reply papers, it was the most recent letter from Ms. Tsang dated April 8, 2013 and she sent a number of these letters almost verbatim the same letter at different times. It was a cease and desist request and it charged Dr. Engelberg and his contractors with trespassing onto her property and she demanded they cease and desist. This was trespassing when they looked over the subject property wall in order to plan to paint it. There was no survey to indicate the exact property line and if a head was visible over the property line or next to the property line, she claimed trespass and demanded they cease and desist.

She contacted the police when there was physical presence from Dr. Engelberg or his contractor on her side of the fence. What they talked about which was something not read in their staff report, not addressed at the Director's Hearing and will not be heard if they read back the transcript of the Department's presentation a few minutes ago. There was no recognition on the part of the Department that Dr. Engelberg wanted to paint this wall, but cannot either physically or legally because the complainant prevented him from doing so.

The Board needed to address this issue and aware of the fact there were laws on this particular issue as pointed out in the reply statement. The law never required impossibilities as quoted from the Civil Code Section 3531 that "no man is responsible for that which no man can control, Civil Code Section 3526, and no one can take advantage of his own wrong" or in this case her own wrong, Civil Code Section 3517. This was the law of the State of California and the Department ignored it and this Board did not have that luxury.

President Clinch said before they go into the Department rebuttal, he wanted to focus on the paint chips that landed on the adjacent property which related to the violation. Attorney May said as a matter of fact the Department made it clear that this was not what this was about and the condition was on Dr. Engelberg's property and it was the wall but President Clinch said that was not what they were supposed to hear. Attorney May said this was the Department's Report as specifically stated and if the Board reviewed the Department's report, it was reiterated or emphasized by the Department representative a few moments ago.

On the Department's report, Page 2, the first paragraph stated it was not about the lead abatement and lead chips but about painting over the wall on Dr. Engelberg's property. If they talked about the removal of paint chips from Ms. Tsang's property, Dr. Engelberg cannot do this unless she

allowed him onto her property. As a practical matter, the paint chips on her property can be swept up with a broom and it was not about a significant or substantial amount of paint chips on her property from his wall. Ms. Tsang's wall had also peeled, her walls painted and it was also built before 1978. There was no discussion of any separation of which paint chips and from whose wall it came from. Commission Secretary Harris interrupted and said they will discuss further on that later but Chief Inspector Bosque will now speak.

Chief Inspector Bosque said the Notice of Violation was issued on July 27, 2012 spoke for itself but it had a reference to paint chips and the reason was when the peeling paint needed to be repaired on the side of the subject building, it needed to be done in a safe manner. The note was there because the inspector observed the peeling paint appeared to have migrated onto that property. Anytime they required the peeling paint be done, they added and it was incorrect from the statement mentioned earlier that this was not about the lead hazard from the standpoint of when they required lead paint disturbed by repairing peeling paint on the side of a building, they asked that it be done pursuant to the Building Code Section and this was what it talked about. As far as the statement of the law that was given to him, it was not the Department or the City's position. Obviously there were disputes between these different property owners but for them a typical Notice of Violation asked that the peeling paint be addressed and done in a lead base paint practice manner.

Vice President Melgar said all Dr. Engelberg had to do was clean up the chips on his neighbor's property. Chief Inspector Bosque said it appeared to the inspector at the time the issued Notice of Violation had migrated from the peeling paint from the side of the wall. Vice President Melgar asked did they know it was because of unsafe practices or was it was a natural thing? Chief Inspector Bosque said they had not observed at any time any work was done to the property in that there was no proper containment and observed over period of time there were deteriorations and if the work were to begin, it would require proper containment. Vice President Melgar asked if there was peeling paint on the other side of Ms. Tsang's property? Chief Inspector Bosque said she was not aware if there was or not and it was not the subject at that time and what the inspector saw was the wall that was at issue before the Board.

Commissioner Mar asked if there were other Notices of Violation on Dr. Engelberg's property? It was still a catch 22 because if the paint chips had fallen naturally because of ill repair, the property owner cannot repair it and it will be a never-ending process. He should clean that up but will ultimately need to go onto the neighbor's property to do so but he cannot resolve the structural problem which was to take off the old paint and put on the new paint and wondered if it was addressed?

Chief Inspector Bosque said from the staff's standpoint, whether he can get onto the property or not, they were not the Trier of fact for that and they did not have expertise to know whether that was the case or not. Although they realized there was a history between these two property owners and that was why they attempted to give them some additional time to try to work this out. Unfortunately, when they noticed the peeling paint in situation like this, they were compelled to write the Notice of Violation and tried to give them additional time.

Typically when they write a Notice like this and someone needed access to an adjacent property, they can work out a way in which the work can be done. Unfortunately there were a lot of

properties with zero lot lines in this city and usually reciprocal easement agreements and the work got done. This was one of those situations where there was a dispute but when they wrote the Notice of Violation they were not in the position to determine that was the case or not but they still had to write the Notice of Violation and whether it was factual or not that he cannot access the property she would not know and cannot make that decision legally.

Commissioner McCarthy said it seemed like they were damned if they did or damned if they did not. The question was recognizing with testimony and letters in their package stating that they had best intentions to do the right thing to clean up this but they cannot. Should the Department's position recognized that and was the Appellant here today? Chief Inspector Bosque said from the Department's standpoint as she had made her comments originally, there was evidence in the package that stated that and they will not restate the position of either party. Had there not been that information, they would perhaps comment and provided some information for him and it would be second hand information from their standpoint so he had the position of both parties.

Commissioner McCarthy said if he was on the job site with a violation of that permit and an inspection asked to correct that, he had the option to correct and make it right for the violation. With that in mind, would it not be who the Department to ask the hard question why this lady resisted on her property to correct the violation. Chief Inspector Bosque said she had information to provide him that she was reasonable as well. Commissioner McCarthy asked if the complainant was here today? Chief Inspector Bosque said she was here and they needed to hear from her because from that standpoint they cannot make that determination. She gave them documents where she believed the property owners that had been cited had acted unreasonably and they cannot determine who had not acted unreasonably. Although she made sure they had all the information in front of them and perhaps needed to hear from her as well.

Commissioner Mar asked if there were other problems besides the wall? Chief Inspector Bosque said there was no other violation except this particular one and the reason they extended 3-4 months was they anticipated there would be an agreement and they tried to facilitate these but in this situation both would not agreed. Commissioner McCarthy asked if it was her testimony that there were other problems with the neighbors? Chief Inspector Bosque said his question was if there were any open cases and there were none.

Commissioner McCarthy said when there was previous remodeling and improvements done to the property, there was no issue there? Chief Inspector Bosque did not have that information as far as building activity on the property but dealt with her complaint regarding the peeling paint. Commissioner McCarthy said there was no issue prior issue brought to her attention with these neighbors other than the standing issue before the Board today. Vice President Melgar asked if she noticed there were children under age 6 living in Ms. Tsang's property or visited? Chief Inspector Bosque said she and her inspector had not observed that or had that information and there may be some recent developments.

President Clinch asked to hear from the complainant and City Attorney Clark said the complainant was not a party but she can speak on the public comment. President Clinch said they may not be ready for public comment and asked for Appellant's rebuttal.

Attorney May said the Department had just admitted they ignored the Appellant in the room which was Dr. Engelberg's inability to comply with the Notice and it was not for lack of desire but because he was legally and physically prevented from doing so including by the Police Department. For the Department to suggest they did not know this was a property line issue and the access was only from Ms. Tsang's property was disingenuous and unbelievable. The Department had known this and it was obvious from the photograph that anyone who was there can see the only access to this wall was from Ms. Tsang's property.

You did not have to be a legal genius to go onto someone's property without their permission was trespassing. If the Department had legal questions about this issue which suggested they did was unbelievable, since they can refer legal questions to their City Attorney's Office. There were literally more than a hundred attorneys in the City Attorney's Office and one Deputy City Attorney present today. The Department can request legal advice in situations such as this with no problem at all. He can speak to that himself because he was a Deputy City Attorney in the Code Enforcement Division and personally dealt with these sort of issues when he served with the City and to suggest that the Department had no way of ascertaining what the legal situation here was ridiculous.

Commissioner McCarthy asked did he understand the seriousness of the lead abatement they had to do and required certain procedures to process? Attorney May said he understood that and he had his EPA certified contractor, Phillip Lubin, present today to respond to that. They were fully aware of what was required with respect to remediating lead paint issues and had done this 100% and it had been the case for 15 years. Commissioner McCarthy said what was in front of the Board today, they wanted to get to the bottom of this and they respected that there was obviously some bad tension on this but they needed to focus on a solution.

Attorney May suggested the solution would be the Department to cite Ms. Tsang also for the violation and to enforce the violation against her as well so the Department, if necessary, go onto the property with the powers granted to it by the Administrative Code and to get this problem remediated. Dr. Engelberg agreed to pay any and all reasonable expenses which were not the issue. As far as being reasonable, the most recent attempt to resolve this issue outside of the compulsion of the government was contained in Exhibits 2, 3 and 4 of their reply.

A fellow named Joe Butler, who represented Ms. Tsang, contacted and emailed him a couple of weeks ago and will help to informally to resolve this issue. In order to resolve this issue, there were email interchanges with copies to inspectors. Ms. Tsang as well as him and he also copy people in his responses. They were to resolve this issue by these email interchanges and anticipated resolving before this Hearing. When it was clear that he was reasonable and chances they will resolve this matter before today, Ms. Tsang disavowed any connection with him and rejected all of his efforts.

Commissioner Lee asked when Dr. Engelberg purchased the property? Attorney May said he purchased the property in 1997 and there was an ongoing dispute at that time with the previous owner who tried to paint that particular wall and Ms. Tsang resisted. It was a fact that the previous owner was involved in a lawsuit which resulted in a judgment of six figures against Ms. Tsang. Dr. Engelberg, Appellant, wanted to clarify that the previous owner was sued by Ms.

Tsang and he was named the co-defendant and because of the interference she painted that side and hosed off the paint on the side of the wall they tried to put on. She had a judgment of \$141,000 against her in a jury trial which subsequently reduced to \$101,000 which may explained some of her bitterness to allow the access and at one point she offered him access for \$200,000.

President Clinch asked if there was any other public comment?

Ms. Tsang showed a photo taken on July 4th when they were out and it showed the wall with two colors. The original color was blue and painted yellow and she pointed out the gardener who stepped onto their structure and other photos on the roof with lead paint onto her property with different colors. The police was contacted that day and demanded they ceased all work and they said they will comply. About 10 days later, they trespassed again and the wall was painted all over. She hired professionals for inspection and they viewed it as very serious. She was advised to contact the City for inspection before the contractor would give her an estimate. Under State law, they required certification on lead paint and they had the right to ask them to comply with the law.

Ms. Tsang said she maintained her position as shown on one of many letters dated September 18th. She would grant access to her property if they were properly certified as required by law and to provide her with certification, workman compensation, liability insurance and a copy of the signed contract with the scope of work and she had legal rights to have that information. They did not provide her with any documents and refused to spend the time and effort to provide those things. The person they hired must be personally certified and who that worker will be but they did not provided any document and often personally been attacked. He filed a lawsuit in the court and claimed easement and acquired title but the court ruled they did not have an easement and they were compensated.

He prevented the project from moving forward because she gave them documents that were on her files and repeatedly informed them of the requirements for certification. When he worked on her property, he needed liability insurance for protection in case of a fall. When they were out, he later informed her he did that and she can sue him and he will move and she cannot serve him. This attitude went on for a long time because she was different and was mistreated; and there were more photos.

Vice President Melgar said she read back and forth with Joe Butler and so the trellises were hers and she did not want to remove them. Ms. Tsang said there were no laws that required them to remove anything and she granted permission to one of her neighbor, James, on the southern part to paint and remove the ivy because he provided her with the worker's name and their identification. Vice President Melgar believed they were reasonable but how much space between the trellis and the wall? Ms. Tsang said the post was attached to that and it happened a long time ago.

Vice President Melgar said the picture seemed to show there was sufficient space to do proper containment and to stabilize the paint underneath and believed there were about 5 inches and insufficient space to do proper abatement. If Dr. Engelberg covered the cost, would she agree to

let him remove and put it back? Ms. Tsang said she wanted to be comfortable with the person he hired and recently pleaded with him for that information if the worker was certified and his company was EPA certified that will work on her property. Vice President Melgar said she agreed with her but the issues from Attorney May's statement, representative of Appellant, seemed they will hire a certified contractor and hopefully provide her with the evidence of certification of his workers. If they went that far, it seemed like the next impediment was the trellis because the paint behind it was fairly damaged and if she would agree.

Ms. Tsang will accept if it was reasonable and was comfortable with the necessary information they will provide her. She disagreed that everyone was treated equal especially in San Francisco, a liberal city. As happened in the past, she believed they were racially bias in discrimination of their rights if they were ethnically different or of Asian national. In the courtroom, she asked him to make assurances he will not damage her property instead he had an attitude and was disrespectful and threatened "to come to her property at anytime as he pleased" which continued even today.

He wasted her valuable time by not providing the needed documents and this was someone who came to her property to certify the identification but she once had other laborers complied with her request and taken two days to finish the job. He had refused for many years to comply to her requests and wondered why he believed he did not need to comply with the law. She was cooperative since the beginning as indicated by her recent and last letter to him. He showed he was not responsive or cared if there was a Notice of Violation but she attempted many times requesting him to provide the necessary documents but he did not respond or ignored her requests.

Vice President Melgar asked if they tried mediation? Ms. Tsang said she would have except she was under pressure when her mother became ill and recently died. She wanted to exchange some information but instead they asked her to remove everything. She was not an expert but were aware of the contamination and it was covered up and unidentifiable with blue and currently painted partly yellow and more than once. When she contacted the City for an inspection, she had an estimate of \$1,875 but that estimate was created fraudulently. The contractor was in business for 25 years, certified with liability insurance including 21 years with the Better Business Bureau. She hoped the Board understood she wanted to be comfortable with the right choice but disliked their "come and go" attitude.

Vice President Melgar asked if there were children under the age of 6 that resided in her property? Ms. Tsang said perhaps the next door building but not in her building. Commissioner Mar made clarification of Vice President Melgar's question. It was very clear from this Department that they wanted this abated with a certified person on the process of lead abatement and the painting contractor may be present today. If the person was certified by the State of California on lead abatement and supplied her with all the necessary documents and specified timeframe, would she agreed to allow them access on her property only for that specified time to commence work?

Ms. Tsang said he must specified that his company was EPA certified and the worker that performed the work including the company, although it may be different, the person that

performed on the lead paint in California should be California certified and that was her position since September, as detailed in her letters. They should work amicably together instead of evading the situation and always personally attacked her on a request to provide her documents that was required by law.

President Clinch asked if there was any further public comment?

Chief Inspector Bosque clarified that she had just received the document from the painting contractor and to him as an individual and was certified as renovator regarding lead base paint. From her previous statement, they sent this to an Administrative Hearing for the parties to get together for the Hearing before the Hearing Officer and wanted to commend the Board and believed now that both parties were before them and there were some movements. The complainant should be aware that this Board had power to continue this for some period of time and if the proper documentation was not provided to Ms. Tsang and she failed to cooperate, the Board had that power. Since she was the complainant and interested, in fact, in getting the work done and provided the documentation, if they can structure this with the Board's great guidance, they might find some closure today.

Vice President Melgar asked about the certification before her and at Ms. Tsang's request, did the contractor as being properly certified provided any evidence that his workers were trained and certified? Chief Inspector Bosque said on the EPA requirement? She currently received the documentations and perhaps they can answer that.

Phil Lubin, general contractor, said he was not a painting contractor and this conversation was extremely complicated. There was a lot of language that was used in this conversation that placed him in a very difficult position because they talked about lead repair and renovation per the State of California, EPA, HUD, abatement and remediation and those were all different things. He was not certified to do abatement and remediation but he and his workers absolutely were trained to repair and on renovation within the City of San Francisco and generally within the State of California because there were so many buildings that were pre-1978.

Typical disturbances of lead base paint like scraping, sanding and/or basic prep, removal of drywall and trim came under repair and renovation. The abatement was a different procedure designed to last over 20 years and was not a maintenance issue and the remediation went beyond that and was not certified for those things. He was a repair and renovation contractor and never had issues with his certification or his work in San Francisco or Marin.

Vice President Melgar said she asked only if his workers were properly RP certified and it seemed the answer was yes and that was all they asked about the Notice of Violation. Mr. Lubin said he did not want to hear that if he personally did the work and if the State did not feel he was working within the confines of the Law. The truth was in San Francisco with the Building Department as it currently stands and with the State Contractors Licensing Board, he had all the qualifications necessary to do this work and have training logs as EPA required and all the documentation and containment would be done per EPA requirements.

Vice President Melgar said she was familiar with a couple of things about the law on lead and

believed his workers were RP certified and a 3-day training for them and she heard that his workers were trained with no certification. Mr. Lubin said he was certified as a supervisor and his company was certified. They were trained and as their supervisor, he logged their training but they personally not required to attend a certification class. As a qualified employee of the company, he went to an 8-hour RRP certification class and his workers were not legally required to go through training because he was legally allowed to train them and as their supervisor he was required to maintain all the best practices.

Commissioner Mar asked about a photo taken by Ms. Tsang, was that one of his workers or a gardener? Mr. Lubin said it was not one of his workers.

President Clinch asked for any other public comment? He did not know how they could uphold the abatement on this issue because there were too many quarrellings ongoing and as Chief Inspector Bosque stated fortunately there were movements today but they should grant some sort of a continuance so this can and hopefully will be resolved.

Chief Inspector Bosque said they tried their best to resolve this matter before it came before the Board but it had to come to them before this happened. Her recommendation was to give the property owner 3-6 months with certain guidelines by the complainant that she understood that this was not an abatement or remediation, but this was a repair, as stated on the staff report. Abatement was a completely different thing. If the property owner provided her with A, B, C and D, there should be a commitment on her part and they can return and report. It was a rare instance and wanted to say this was an exception but if they cannot get the concurrence, there could be a possibility the case could get administratively closed if they cannot get that cooperation and wanted to offer to the Board for consideration.

President Clinch said they will cross that bridge when they get to it. Commissioner Lee asked what were those A, B and C items? President Clinch said to provide the documentation she had requested with the certification and that she provided access to her property.

Attorney May said Ms. Tsang already pointed out to the Commission that she received the certification and gave the Board a document with the certification. From the contractor's testimony, he was certified and met all the requirements. It may not be the requirements she thought he needed to meet but that did not mean he had not met the requirement of the law and that was the issue here. If the Board structured their order to her satisfaction that was not conducive to progress because there had to be some objectivity here and just because she felt she needed something that can also change and it had as she had originally requested certification. The issue of California State Certification as opposed to EPA certification that recently came up last week and it had been 15 years and there was nothing to prevent that from continuing. What she requested cannot be left nebulous and there have to be some objective guidelines issued by this Commission that made sense that would be reasonable and legal.

President Clinch said they did not have that jurisdiction. Vice President Melgar said they can only go as far as they can go within their administrative purview in what they can do. They can also not grant the continuance and it was sort of their leverage. From where she sat, she advised he should be a little more flexible and did only what was legally required, which was the bare

minimum and probably what he did. Sometimes when they were emotionally invested in something and a conflict would be difficult to take that next step and it seemed that was required and perhaps he should step back. She never met him before but she listened to him and it appeared he did a lot of attacks at Ms. Tsang, which was not necessary and wondered if he could come up with something more acceptable and satisfactory to Ms. Tsang and they could grant a continuance and return to resolve it.

Vice President Melgar said Mr. Lubin seemed to be a completely reasonable man to send one of his workers to a RP 8-hour training would cost a couple of hundred dollars and probably pay for it, including an offer to cover the cost of removing, putting the trellis back and some fertilizers which would satisfy Ms. Tsang. From the rhetoric they heard and seemed they went through all of this before and they were stuck. Perhaps he can prepare in writing that went slightly beyond and return in a month to see if it had not worked or they will take the next step. Until now she had not heard he at least been there.

Attorney May confirmed it happened before and they went through this process and will do it again at her request. They were stuck and sensed his frustration because this was not the first time they addressed this issue, as indicated on their reply and Exhibits 2, 3 and 4. They recently tried to resolve this in an intelligent and adult fashion as seen by the results. They will make an effort with a new idea to satisfy Ms. Tsang with her concerns and return to her.

Commissioner Lee said they would like to see three things to help them make a decision next month, 1) if they have communicated the certification paper for the workers and the company to Ms. Tsang, 2) if he presented her with the plan on how he proposed to paint that wall, such as will there be set up of scaffolding, how his workers will access or paint that wall and the timeframe, 3) if there was a plan to remove and replace the trellis when painting.

Attorney May said the Board were already provided with those three items and a copy of the certification before them including emails contained in Exhibits 2, 3 and 4, the certification and the numbers. They can identify the workers who will actually be on the job assumed they will have the job in the next couple of weeks but they cannot obviously know who, if Ms. Tsang objected, or if this process would be 6 months from now. They will remove and replace the trellis at Dr. Engelberg's expense and from Vice President Melgar's statement, some of the wall cannot be painted because the trellis prohibited it.

Dr. Engelberg said it was ridiculous to ask them to come to an agreement because it had not happened and the only progress made last week was Mr. Butler, on her behalf, asked her to remove the trellis. She responded that she placed wiring around it and made it totally impossible to remove or paint around it and she went on the opposite direction of what you wanted done. After 15 years of this and asked them now to take any further steps, "negotiating with her in good faith" wasted his and the Board's time and money.

Vice President Melgar said they were in a position with no choice but to pursue the negotiation on the violation and if they were stuck. Commissioner Lee said they were not saying they decided one way or the other now and would like to see if he can make one more effort to reach out and that was all.

Commissioner McCarthy said he noticed the tensions were high and felt the frustrations on both sides. A lot of the work was done, which was good, as Commissioner Lee pointed out as a good faith effort. They understood and listened to the Appellant's concerns and asked them to recap these concerns even though they dealt with them before and asked them to do that within a time frame. He agreed that 3-6 months was very long to ask for and agreed with a shorter period of time because a lot of the work had been done for conclusion and he did not know how the Commissioners felt about the timeframe. With the interest of moving this along and most of the outreach done and at that point if there was still resistance, they can make some good decisions with regard to this.

Attorney May said they will make their best faith efforts to resolve this issue prior to their next regularly scheduled Hearing and hopefully return and report to them there was an agreement and in fact resolved the problem. Commissioner Mar said this was a long and frustrating process for them too but they cannot go back 15 years and would implore both sides to process it again even though they believed it was done. They can go only by what was said from both sides in this meeting. From the Department's point of view, it was important to understand that Mr. Lubin was totally qualified to do the work and if he was the contractor of record, resubmit it again even if was done. With all those caveats, time was important and they would allow an extension for a shorter period of time or at least start the work.

President Clinch said it would be Ms. Tsang's best interest to cooperate because it was a dangerous paint that was on her property and asked for any public comments.

Robert Davis suggested an idea to paint both sides and have Dr. Engelberg pay for both and it would be cheaper. Painted both sides, her contractor, 3 bids, end of story. President Clinch asked what the timeframe was on the motion and what was decided? He wanted to see some progress and suggested to the next meeting of May 15th, as time was ticking.

President Clinch made a motion, seconded by Commissioner Lee, to continue to the next meeting of May 15th.

Commission Secretary Harris called a roll call vote on the motion.

<i>President Clinch</i>	<i>Yes</i>
<i>Vice President Melgar</i>	<i>Yes</i>
<i>Commissioner Mar</i>	<i>Yes</i>
<i>Commissioner McCray</i>	<i>Yes</i>
<i>Commissioner McCarthy</i>	<i>Yes</i>
<i>Commissioner Lee</i>	<i>Yes</i>

The motion carried unanimously.

F. CASE NO. 6777: 1325 Portola Drive

Owner of Record and Appellant: Sofia U. New, 219 De Long Street, San Francisco, CA 94112

ACTION REQUESTED BY APPELLANT: To put the process on hold due to the suspended permit.

NOTICE OF DECISION: After deliberation of the evidence submitted and the relief sought, the AAB made the following findings and decision: to uphold the Order of Abatement and Assessment of Costs.

John Hinchion, Acting Senior Building Inspector, Code Enforcement Division, said this was a vacant lot at that time and the first Notice of Violation of May 31, 2011. The violation of 500 cubic area of earth was removed without a permit resulting in unapproved cut of 12 feet height. On August 14, 2012, an Order of Abatement was issued with conditions and a permit was issued in July 15, 2011, Permit Application #2011-0712-0010, to install temporary shoring and that work had not completed yet and if it were completed, it would clear the violation. The staff recommended that the Board uphold the Order of Abatement and imposed an assessment of cost.

Sophia New, Appellant, explained some of the ongoing problems. This was a vacant lot and a brand new construction and there were several mistakes made from either the permit, the Building and Planning Departments, etc. It was appealed and re-appealed by her neighbor which was a very time consuming and administrative part. They attended the Board of Appeals and the neighbor made the same complaint that it was not built according to the approved plans but the Building Inspectors were present and it was perfectly built according to the approved plans.

The contractor was building while on the third floor and comments were made about blocking their 5:30 sunset light or something similar to that. It was not a substantial complaint and went through that. Last month was the last appeal which was appealed again although there were no changes they went through it all again. It was unanimously approved and should be allowed to continue and she did not understand the Notice of Abatement. She believed they should not penalize her if the Building Department improperly issued a permit, as proved by a letter. If this penalty was valid, she had the right to appeal and since if it was approved she has the right to continue building without constant interruptions by the City which seemed they were always against the owner.

President Clinch said the Department can elaborate further since it appeared there were more details than that and the Appellant can return to speak after the Department. Inspector Hinchion acknowledged there was a permit appealed and was recently reinstated but that permit being appealed had no affect for the permit issued for this violation. They wanted to encourage the property owner, although the permits may be appealed, they were not impeded from completing the work and the permit which was valid should clear this violation and hopefully done as soon as possible. There were outstanding special inspections for compliance and have the permit signed off and they would no longer have concern on danger. Keep in mind the reason, it may have been appealed on an unrelated permit because the dirt was removed before the site permit had graduated to a full permit and possibly some bad atmosphere was created in the community. Aside from that, they hope they complete the work on this permit as

soon as possible and closed the case if they provided a signed permit.

President Clinch rephrased what the inspector stated earlier that the permit was granted for temporary shoring but no shoring had been installed instead there was a vertical cut. Inspector Hinchion said shoring had been installed but they needed special inspections cleared and obtain final inspection for shoring and she was very close. Possibly the other permits were appealed and they believed they were not allowed to work under this permit and in his opinion it was an error. Vice President Melgar said all she had to do was schedule an inspection and the work was considered in compliance for this violation.

Inspector Hinchion said her engineer should submit any related documents and have those cleared for special inspections and to schedule a final inspection to resolve the matter. While the work was not done, he recommended the Board uphold the Order of Abatement to allow her to pay the initial fees and if they have a signed off permit, it would be abated with the final fee. When an Order of Abatement was issued, the Department was allowed to recover their outstanding fees of \$1,007.50 and not because her contractor proceeded without a permit as questioned by Commissioner Mar.

Commissioner McCarthy said the shoring was in place and plan checked by DBI and was put out there. Inspector Hinchion said the shoring was in place but unsure if there were inspections adequately on how safe if it was correctly done. Commissioner McCarthy asked if they were currently allowed to work on the other phase of the job? Inspector Hinchion said he understood the house had been completed. Commissioner McCarthy said he passed by it every day and was familiar with that and wondered why it sat there. He was concerned why a shoring was in place without the proof of special inspections and any set of plans or if any engineer was present today and if there were any background checks done.

Inspector Hinchion said if they uphold the Order of Abatement today that would encourage them to just complete the work on that particular permit, regardless of the other work and when the permit was signed off, they will know there were no longer unsafe conditions regarding that particular area. Commissioner McCarthy said he was wearied about the fact they did not have some professionals to reinforce the fact that shoring had been installed and waited why the inspections were not done and no back up. Inspector Hinchion said he represented the Department and not the other side. Commissioner McCarthy said he duly noted.

President Clinch said there were no other comments and asked for Appellant's rebuttal. Miss New, Appellant, said she had the job card with her and everything was stated. All the plumbing for the foundation and everything were done on the 3rd floor but still it was suspended. Vice President Melgar asked if she understood this was specifically for the shoring of the soil that was taken away and not for everything else? Miss New said the shoring part of it because of this statement she can start building. Vice President Melgar said for the properly inspected, she needed to close the loop on that. Miss New showed the card for temporary shoring and payment for the permit, etc. She wondered why her contractors did not communicate with the City inspectors when their signatures were on the job card.

President Clinch asked what prevented Miss New or her contractors from obtaining the special inspections and have an engineer's letter stating the work was done? Miss New said she did not understand and partly because she hired him to do the work but it took so long for Planning Department to respond, the height of her neighbor and the present project which took a year to correct that particular project.

President Clinch asked if there were two different projects? Miss New said they suspended and they received it last January, the following day it was suspended and did not understand that. She should always have notices in written form when someone complained and not through the phone when it was suspended. She was contacted yesterday regarding the permit was appealed again and caused further delayed on the completion. This simple problem can be resolved if the architect presented an accurate height instead of ceased work and was not related to the approved plans.

President Clinch said typically DBI required the drawings stamped with approval and listed the required special inspections which her contractor should be very familiar with what was required. Secretary Sweeney said before the permit was processed, it went with the permit and attached to it and indicated what special inspections on the plan and was very clear to follow. In addition, this case started well over a year ago when the defendant had a site permit and started construction. It was a fact that no work can started on a site permit and wait until the first addendum comes out for the foundation retaining wall and that was how they first went there and that poisoned the water with the neighbor and here they were. Miss New said she wanted to appeal and requested the penalty be waived since it did not originate from her.

Secretary Harris said there was no further public comment on this item.

President Clinch made a motion, seconded by Vice President Melgar, to uphold the Order of Abatement and the Assessment of Cost.

Commission Secretary Harris called a roll call vote on the motion.

<i>President Clinch</i>	<i>Yes</i>
<i>Vice President Melgar</i>	<i>Yes</i>
<i>Commissioner Mar</i>	<i>Yes</i>
<i>Commissioner McCray</i>	<i>Yes</i>
<i>Commissioner McCarthy</i>	<i>Yes</i>
<i>Commissioner Lee</i>	<i>Yes</i>

The motion carried unanimously.

F. GENERAL PUBLIC COMMENT

There was no General Public Comment.

G. ADJOURNMENT

President Clinch made a motion, seconded by Vice President Melgar, that the meeting be adjourned.

The motion carried unanimously.

The meeting was adjourned at 11:26 a.m.

Respectfully submitted,

Serena Fung, Secretary

Edited by: Sonya Harris, BIC Secretary