



**ABATEMENT APPEALS BOARD**  
**Wednesday, May 15, 2013 at 9:10 a.m.**  
**City Hall, 1 Dr. Carlton B. Goodlett Place, Room 416**  
**ADOPTED August 21, 2013**

**MINUTES**

**A. CALL TO ORDER and ROLL CALL.**

The meeting of the Abatement Appeals Board for Wednesday, May 15, 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**  
**Debra Walker, Commissioner**  
**Dr. James McCray, Jr., Commissioner**

**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**  
**Patrick O’Riordan, Chief Building Inspector**  
**Andrew Karcs, Senior 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 March 20, 2013.

*Commissioner Mar made a motion, seconded by Vice President Melgar, to approve the minutes of March 20, 2013.*

Commission Secretary Harris asked for public comment on the minutes and there was none.

*The motion carried unanimously.*

There was a request to have an item heard out of order on the Agenda and President Clinch granted permission to hear **Item number 3**.

**D. 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.

**3. CASE NO. 6776: 767 North Point Street**

**Owner of Record and Appellant:** Charles B. Engelberg, 767 North Point Street, San Francisco, CA 94109

**Owner of Record and Appellant:** Charles B. Engelberg, 4 Birdie Drive, Novato, CA 94949

**Attorney for the Appellant:** David Edward May, 476 Jackson Street, 3<sup>rd</sup> 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 heard oral testimony and reviewed the documentary evidence provided by the Department of Building Inspection, the Appellant and other interested persons. After deliberation of the evidence submitted and the relief sought, the AAB made the following findings and decision: Uphold the Order of Abatement and assessment of costs, provided that (1) the Order shall be held in abeyance for 60 days; (2) the Appellant is required to complete all work within 60 days. All time periods specified in this decision become effective on the date of the Notice of Decision. The Abatement Appeals Board may rehear an appeal upon which a Decision has been rendered, provided a request for a rehearing has been made in writing 10 days of the date of the decision.

Rosemary Bosque, Chief Housing Inspector, said this particular item was continued from last month's Abatement Appeals Board with direction by the Board to the property owner with some requests to the adjacent property owner and the Appellant. She provided the Board with updated information they requested the adjacent property owner to give them access to the property for the purposes of taking photos to show them what the property looked like approximate to today's meeting.

Unfortunately, the adjacent property owner was not willing at this time to facilitate that inspection. The Board had certain requests of the property owner and a representative of the adjacent property owner repeatedly asked for a copy of the contractor's certification given to her during the meeting and commented about the Appellant produced that for the purposes of answers on these items were discussed and returned to the property owners' representative. They had that information with copies of the certification to the adjacent property owner, Miss Tsang. Those were the new items and as indicated from their email, the other item was the property owner had repeatedly asked them about the remediation which was a City requirement and they responded it was not.

Any licensed contractor doing the work must comply with the Notice of Violation with State regulations as well as EPA regulations. Obviously, if it were over 6 square feet of material, they may need a remediation contractor but that was not within the content of the lead-safety practices ordinance of the San Francisco Building Codes, although she stated at the last meeting and clarified again through this testimony on the email they sent to the Appellant's representative. Perhaps they needed to hear from the Appellant and adjacent property owner.

President Clinch reminded everybody that the Department and the Appellant each had 7 minutes presentation, 3 minutes each for rebuttal and 3 minutes each for public comment.

David May, attorney for the Appellant, Dr. Charles Engelberg, said immediately following the last Hearing, Dr. Engelberg wanted to use Mr. Lubin, the contractor but attempted unsuccessfully to sway Miss Tsang, the adjacent property owner, regarding her concerns. They decided to use the contractor, Dougherty Reconstruction Company that Miss Tsang requested some time ago. Mr. Lubin contacted them and received an estimate that was simply a statement of an hourly rate which was unsatisfactory. He later contacted the Dougherty Reconstruction Company himself and spoke with their agent, Mr. Burt, who sent out an estimate for the job that needed done specifically on the remediation, the abatement or the Notice of Violation with respect to the lead-based paint.

They waited for an estimate from the Dougherty Reconstruction Company. At the last meeting, they talked about the lead-based paint that was flaking from the complainant, Miss Tsang's property and brought a photograph of that as well. The Department stated they tried to get on the property to take pictures but Miss Tsang would not allow them. They had the photographs of that and can show the Board but they needed more time. They preferred to re-schedule to the next Hearing since they agreed to hire the contractor that Miss Tsang wanted. He did not think there was any problem since Miss Tsang already stated on the record she felt this contractor had all the appropriate certifications and would accommodate her if the estimate was reasonable to the Appellant. He asked to expedite this Hearing and requested to take it out of order because he had obligations at the Superior Court at 9:30 A.M.

Chief Housing Inspector Bosque said whenever they could assist the parties to get together to get this done, they would be totally supportive.

Attorney May said they were still waiting for the estimate from the contractor and assumed it may be a matter of a day or two to do the work. The biggest problem was to get the adjacent

property owner or complainant, Ms Tsang, to cooperate with getting this done. At this time, there was no need to get into more details and they had documents if the Board needed to see them but requested to put the matter over until the next Hearing.

Commissioner Lee said just for the record, he wanted copies regarding communication with the Dougherty Reconstruction Company. President Clinch asked if there was any public comment.

Attorney May said just for the record, he showed an email from Phillip Lubin which described his conversation with Miss Tsang. Also attached was his certification the Department had discussed and placed that into the records. He also showed a photograph of Miss Tsang's building for the area affected and a clear view of the peeling paint off the side of the building. This building was built prior to the ordinance cut-off date and the peeling paint was presumed to be a lead-based paint and the Board can keep these photographs.

He also showed a record of the complaint against Miss Tsang for lead-based paint that Inspector Harry DerVartanian cleared a day after the complaint was made related to the front of the property where she painted but for some reason the inspector had not cited her for the lead-based paint that existed on her property but cited only his client for the paint chips that were on Miss Tsang's property. At least some of those chips were coming from her building and not just from his clients building. They did not need to go into these issues, but wanted the Dougherty Reconstruction to fix this matter and be done with it.

President Clinch asked if there was any other public comment?

Joseph Jones said he resided at Miss Tsang's property. On Charles Engelberg's letter which he submitted to the Board and in the Board's file, he admitted his worker scraped paint from his wall and the paint scraps dropped on her property. His letter proved he intentionally created an extremely hazardous environment in Miss Tsang's yard and obviously did not use containment which in fact they committed unsafe work practices.

He referenced the State law and their website and quoted "Is lead certification required for the type of work I do? Will you be working to reduce lead in California? If you planned to do any work designed to reduce or eliminate lead-based paint, lead-contaminated dust or lead-contaminated soil in or on residential or public buildings in California, State law requires you to be a CDPH LRC certified Lead Supervisor or Worker, Title 17, California Code Regulations (CCR), Section 36100(a)(1)."

Another photograph showed Mr. Engelberg's paint tested by the Bay Area Lead Detectors and they issued a report which proved Mr. Engelberg's paint contained high level of lead. He respected that the Board would uphold the Appeal and not let this go on any further. It had been over 10 months and nothing was done. They played games and tried to hire people that were unlicensed, unqualified and uncertified and it would not make sense to use those people on their property.

Ellen Tsang, Complainant, said Mr. Lubin talked with her for 5 minutes outside and stated he was not required to be State certified and probably did not want to do the job. The inspector

came to her property twice and took 32 photos. They had not responded to her emails why they wanted more photos. The paint was scraped a long time ago and her backyard had been painted twice all these years. It was untrue they cannot do the work because she refused them access and testified she asked them to use the contractor she preferred sometime in August but they refused because “it was fraudulently created and too expensive.” Since August, she wrote numerous letters requesting them to have certified people but they were not serious.

About 12 years ago, she gave her neighbor access to paint his wall and this year gave him access to remove ivy on his wall. Her requirements were the same as for Dr. Engelberg except they complied immediately and completed in two days. She wanted the Board to know she was not the problem because the Appellant refused to use the State certified workers in compliance with the law. The Dougherty Reconstruction Company was acceptable to her but they refused to give her details and not use their \$65 an hour contractor. They contacted another company provided by Mr. Gossett, who was present today.

Vice President Melgar said her neighbor received a detailed estimate from the Dougherty Reconstruction Company, with expertise on lead paint remediation and at least 20 years experience with remediation in the City. If that was already in process, why would she not agree to wait until they can provided details to her later or was it no longer acceptable to her? Miss Tsang said they wasted a month, provided her nothing and disobeyed the Board’s orders. Since they had not complied with her request, she contacted another company which provided her details and certifications. It had been 10 months now with tenants residing there and she cannot trust them.

Vice-President Melgar asked what kind of detail Ms. Tsang wanted? The Dougherty Reconstruction Company had all the certifications and experts in lead remediation and at \$65 an hour was very reasonable. What had she expected since it was agreed by her neighbor to directly hire and pay them. Her neighbor should be more concerned since they did the hiring. Miss Tsang said the last time he was under oath and testified many times he will do this and that. She also contacted the Dougherty Reconstruction Company and wanted a detailed ready to do the work. She wanted to know the timeline but they had no interest to provide details.

Vice President Melgar asked if the Dougherty Reconstruction Company gave her neighbor a detailed scope of work and provided her with a timeline that was acceptable. Miss Tsang said she wanted a timeframe and to preview the contract before acceptance because they indicated no interest to provide more details. Vice President Melgar said for the record, if they provided a detailed scope of work and a timeline, would she allow them access to the property to get it done. Miss Tsang insisted to approve the details first. She distrusted their phony promises because they defied and disrespected the Board’s Order which was no different. She trusted them since last year but no action and this was the timeframe after a month had passed. She indicated Mr. Gossett had a detailed scope of work based on items 1-10, the types, how many types of plastic and it may take about 6 or 7 days to do the work.

President Clinch asked for any other public comment.

Henry Glasser, Attorney for the owner of Miss Tsang's property. They should be able to solve the problem of who will do the work. The other important matter besides the scope of work was the qualifications of the company or person that will do the work. If they had licensed, experienced people submitting a detailed scope of work, there would be no problem to have the work competently done as quickly as possible.

Ray Hartstrapper, San Francisco Open Government, said he knew Miss Tsang for a number of years while on other appearances before different Boards and Commissions. They knew this was a contentious issue especially there was a Notice of the Violation against the neighbor who required access to the adjacent property to abate the violation. There were many allegations, charges, etc. He was a licensed insurance broker in the State of Hawaii for 14 years and taught insurance for AIG, the largest property and casualty insurance firm in the world and their firm basically reviewed the issue of liability.

Miss Tsang said that she had been told a lot of things but she wanted assurance they hired a fully certified, qualified worker in accordance with the State law. From the pictures, there was a fence on her property adjacent to the building which had to be moved and if they moved the fence, can they guaranteed to replace in good condition or better, etc. Miss Tsang was at the point of uncertainty if the contractor hired was properly trained, certified and insured for any damage will be covered. Obviously it may be a case that would end up in court because if they removed a fence and replacement was not in good condition they have yet another problem.

The issue with the paint on Miss Tsang's property was kind of a red herring which you would file a complaint with the Department of Building Inspection for an inspection. From his perspective, Miss Tsang did what any conscientious property owner would do. She asked for a detailed scope of work, a qualified and properly licensed worker and their assurance to prevent unforeseen problems while on her property that she would be comfortable with.

There was no other public comment.

Commissioner Walker said this case was very complicated but their concern was the Notice of Violation and she wanted to take a position to vote on it. She made a motion that the Board uphold the Order of Abatement and hold it in abeyance for 30 days to allow the completion of the work with all the proper and legal permitting.

Commission Secretary Harris said they can state 30 days or until the day of their next meeting of June 19th. Attorney Clark said it was taking a position upholding this but they can hold off and file for completion of the work and only the fees would apply. Commissioner Walker said the fees applied will be added. Chief Inspector Bosque said she conferred with the Appellant that 30 days was insufficient and needed 60 days. Commissioner Walker said the staff agreed to amend her motion of 60 days.

***Commissioner Walker made a motion, seconded by Vice President Melgar, that the Board uphold the Order of Abatement and hold it in abeyance for 60 days to allow the completion of the work with all the proper and legal permitting and Assessment of Costs.***

Attorney May said before they vote, he clearly argued at the last Hearing the Board did not have the authority to order his client to do the impossible to access the neighbor's property when she resisted under a threat of trespass to perform any work. He believed the Notice of Violation was dismissed but Commissioner Walker said the violation was still in effect.

Attorney May clarified if that was the case, his client strongly opposed it as illegal and this Board simply cannot require something that is both legally and physically impossible for his client to comply with on a neighbor's property to remediate a violation that his neighbor refused access. As they heard testimonies, the Notice of Violation should be directed on where the violation existed at a neighboring property and prevented his client from remediating this problem that went on for 15 years.

Vice President Melgar said in all due respect, they had the authority to uphold the Notice of Violation and seconded the motion to accept 60 days over 30 days.

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

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

*The motion carried 5 to 2.*

**D. CONTINUED APPEALS: Order of Abatements**

**1. CASE NO. 6773: 1316-1322 Mariposa Street**

**Owner of Record and Appellant:** Richard E. Thomas, Environment and Land Management, P. O. Box 877, San Leandro, CA 94577

**ACTION REQUESTED BY APPELLANT:** The Appellant is requesting that the Order be reversed and that he be reimbursed for the cost of this Appeal.

**NOTICE OF DECISION:** After deliberation of the evidence submitted and the relief sought, the AAB made the following findings and decision: Uphold the Order of Abatement and Assessment of Costs, provided that (1) the Order shall be held in abeyance for 90 days; (2) the Appellant is required to complete all work within 90 days. All time periods specified in this decision become effective on the date of the Notice of Decision. The Abatement Appeals Board may rehear an Appeal upon which a Decision has been rendered, provided a request for a rehearing has been made in writing 10 days of the date of the decision.

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

Chief Housing Inspector Bosque said their staff report indicated this was a 4-unit building and the Notice of Violation in question was issued in 2004. The item that remained outstanding dealt with the stairs at the rear of the structure. She showed an aerial photograph of the property viewed from the northerly direction and a side profile. A staff report and colored photographs of the area in question and the stairs reasonably appeared the same way.

There was a recent inspection by the Senior Housing Inspector Andrew Karcs and Chief Building Inspector Patrick O’Riordan. From their staff report, the permit was filed in 2005 and expired with no new permit. It was obviously done beyond 50 percent and not only the stairs were dry-rotted and without the appropriate permit, it was unsafe. A Notice of Violation was issued by the District Building Inspector who requested it be properly done and they had been at this since 2004.

This was an occupied property with concerns that the property owner was slow in response to make repairs, improper permits and not followed the required codes. From that standpoint, the staff believed the Assessment of Costs was valid and asked that the Order be upheld. They had not currently complied since cited in 2004. On the permit history and their staff report, there was no permit to address the new Notice of Violation issued from the inspection by Chief Building Inspector O’Riordan and others.

President Clinch asked if the Appellant was present and said he had 7 minutes.

Richard Thomas, Appellant, submitted a document as part of a response to the Building Department yesterday. In 2004 and 2005, there was a final inspection but no property job card. The inspector asked for another job card but the work on the deck and other areas of the property were done. He hoped the job card will be found and signed off by the inspector but had not heard from any one until in 2012 which automatically resolved by itself.

In 2009, the complaint sheet report by Inspector Jose Lopez indicated he attempted contact with him and Senior Inspector Karcs left several voicemail messages. The problem was the permit expiration date of January 25, 2009 eventually expired on April 25, 2009 the same year as their entries. The inconsistent data was presented with a final warning letter of September 16, 2009 which he had not received.

He voluntarily applied for a permit that costs \$220 for an administrative permit for \$1.00 and it should be done. Inspector Karcs asked him to bring the Building Code up to code for 2005 and asked to have an engineer completely redo the deck. The pictures showed the work was in progress and all this wood was redwood. He hired Gregory Jones, a licensed engineer, to work in the first 10 days and all the plans were satisfied with the City. He had until January 25, 2014 to complete the work but requested the Head Inspector for 90 days.

Chief Inspector Bosque said the Notice of Violation was written in 2004 and the permit had expired and the work was incomplete. He filed another permit in January, 2013 but subsequent to that, Chief Building Inspector Patrick O’Riordan was at the site and observed substantial



problems with the work that was done between 2004 and present. Why it took too long to repair the rear stairway structure in this fully occupied building since 2004? They strongly believed an Assessment of Costs should be imposed and the Order be upheld to alert this property owner that he needed to be more timely.

The Appellant read his comments from the complaint data sheet but the issue before the Board was he did not get the proper permit and it was not done. The work went beyond the scope and the proper work was not done. They needed to understand the Building Inspector went there and wrote another Notice of Violation because what he did was so catastrophic and it was in bad condition.

Chief Building Inspector O’Riordan said Mr. Thomas had the permit issued for the necessary repair to the deck and stairs. In mid-January, he was at the job site and was more concerned with the code compliant safety issue because the deck had severely dry rotted. The issuance of the Notice of Violation primarily addressed the life-safety issues on the deck and placed a tight timeline to acquire a permit for the work. He was also required to barricade the deck for use until the necessary repairs were safely made. In addition to the current Building Code, it was a life-safety issue. The permit remained in issued status and a second Notice of Violation was issued in Code Enforcement. At this point, there will be a Director’s Hearing from their Department to follow up on enforcement since they had no assigned inspection and signed off for the work.

President Clinch asked the Appellant if he wanted to speak for 3 more minutes?

Mr. Thomas, Appellant, said the engineer had plans that required much of the deck to be laterally reinforced. The deck was substantial and it went from 40 feet, two-story down to a ground floor about 3-story. On the architect’s plans, the lateral support was the work of a master carpenter. They assured none of the tenants may access during construction. He worked on all the rails to assured they were strong and nothing structurally bad on some of the dry rot. The dry rot was being taken care of except the ledgers and cross pieces shown on a photograph.

Both the contractor and engineer agreed on how to build this. He referenced a letter to Chief Building Inspector O’Riordan for the updates on the effects of the tenants’ lives. On his February 21st letter, he indicated the worker was a licensed contractor whose mother was unfortunately in a coma and may delay his project. He needed at least 90 days to complete the work which was a realistic timeframe and the permit will expire in 2014 which hopefully may not go that far. Yesterday, he met with several tenants at the job site and was surprised to learn that part of an awning fell over onto the upper deck while the tenants were cooking and did things that were prohibited.

Chief Inspector Bosque said the stair and deck services can be used as a second means of egress but Chief Building Inspector O’Riordan testified it would be unsafe to do so. The City Attorney can discuss about the life-safety issue as a second means of egress and the conditions. In giving the property owner more time, they were required to address the life-safety issue, Chapter 1A of the San Francisco Building Code, considering the Board’s power, the staff recommended no more time be given.

*Commissioner Walker made a motion, seconded by Vice President Melgar, to uphold the staff's recommendation, issue the Order of Abatement, and hold it in abeyance as long as it was in compliance that the work must begin within 30 days and be completed within 90 days including the Assessment of Costs.*

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

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

*The motion carried unanimously.*

**2. 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:** After deliberation of the evidence submitted and the relief sought, the AAB made the following findings and decision: Uphold the Order of Abatement and Assessment of Costs, provided that (1) the Order shall be held in abeyance for 60 days; (2) the Appellant is required to complete all work within 60 days. All time periods specified in this decision become effective on the date of the Notice of Decision. The Abatement Appeals Board may rehear an Appeal upon which a Decision has been rendered, provided a request for a rehearing has been made in writing 10 days of the date of the decision.

Rosemary Bosque, Chief Housing Inspector, said this was a continued case from last month's AAB meeting and it was the Auburn Hotel with 78 guest rooms, 29 tourists and 49 residential. In the staff report that the Board received, there was re-inspection around the last Hearing of April 24th and the Housing Inspectors' observations. There was substantial progress made but none of the existing residents were relocated. She will later speak about the plan and spreadsheet the Board received prior to the Hearing.

It was a year ago since the Notice of Violation was issued and there were approximately 214 individual violations still outstanding and about 80 violations were done. Some of the rooms

were ready to be occupied but it was not the case which concerned them. While they were very happy, as shown from the photos, as a result was completely different from the past. They still had concerns that if no individuals moved to these new rooms, they would like an Order issued. She wanted an update from the Appellant on what they were doing and this was her rebuttal of what she believed at that time.

Richard Stratton, represented the owner, and said a great deal of progress was made since the last Hearing. When the staff last inspected it 3 weeks ago, he provided everyone a copy of this little demo in terms of bullet points which showed what was done with respect to 15 tenants who wanted to move when the rooms were ready and it was their priority. In the second category, another 10 to 15 rooms should be done within the next couple of weeks for tenants who later decided to move. On the third page, some of the tenants who understandably desired to stay on the same location or live on a certain floor since they lived there for a long time. Many wanted specific rooms and chose to wait until their rooms were ready to move which was underway.

The General Contractor, Larry Wong, was most knowledgeable and will later report his progress. He recommended they continue to the next Hearing and hopefully all the tenants who were ready to move will be moved and a great deal will be done upon completion. The entire scope of work changed when the owners elected to remodel the entire building which caused delays but all NOV's will be moot because of the replacement and it was not only fixing doors and there were new doors.

K. K. Chiu, consultant to the owner, said he was happy to report the progress as he proposed last month that they did the project in three phases, two months in two months. As of next Monday, they will have 15 rooms ready and hopefully the first phase will be done ahead of schedule and the second phase already started and confident it will be ahead of his proposed schedule.

Larry Wong, General Contractor of WNGS Construction, presented a status of their project. Since their last Hearing, they were close to meeting their goals for inspections and signed offs on the 24 rooms for plumbing final inspections. Yesterday they had 40 rooms ready for the electrical final inspection. She inspected her way down the building where they had more ready rooms on the first floor and signed off 10 rooms. Because they had the 24 rooms ready for plumbing, about 40 rooms for electrical without those two signed offs they cannot schedule for the building inspection. There was overlapped scheduling, either of the two today will be signed off and the two rooms were ready for building, electrical and plumbing. He also scheduled this Friday for the rest of the electrical sign offs and on May 20th, the Building Inspection was scheduled to sign off 24 rooms that were plumbing and electrical ready.

Commissioner Walker said they dealt with the Notice of Violations and did a broader remodeling than incorporate fixing these. She wanted a timeline to finish the project to cure all the violations.

Robert Noelke, Appellant's Agent, worked with the owner of the property and addressed some of the issues. In the Notice of Violations, there were 11 items in the public areas that were completed. There were 60 rooms with violations and 11 of the violations noted were completed and 39 of the 60 rooms were vacated. They continued to work on them and 10 rooms were

occupied on this Notice of Violation. They talked about only the Notice of Violation and there were 22 other general items such as lead-based paints, guestroom doors that closed improperly and three of those were done and 19 still outstanding. They had made significant progress and they had four active building permits, two electrical and plumbing permits but needed at least a month to get them completed under the permit. All the Notice of Violation items will be complied with and if they had all the clearances from Electrical, Building and Plumbing Inspectors, it would be all done about 3 days.

Mr. Stratton agreed that when all the rooms were signed off and they were at the mercy of the people scheduled to sign off the different items. Realistically within the next month, all the sign offs will be needed and two of the rooms may be ready by Friday but it was a matter of timing if the tenants were ready and wanted to move within the next 30 days or until the next meeting. As to completion of all the NOVs and everything involved, he was unsure if all can be resolved in 30 days. He conservatively anticipated at 60 days but the vacant rooms were much less pressing because they all will be fixed and primarily focused on the occupied rooms.

Chief Inspector Bosque said there were a couple of concerns and wanted to know the plan for specific individuals who refused to move into another room and how would they handle the situation since they could have simultaneously worked on those rooms. It needed completion within the next 30-60 days they chose and the overall concern was when this work was done they had 29 tourist and 49 residential rooms.

From an experience standpoint, it was important when you have this kind of remodel going on with the code violations, they had seen in the past on some buildings had chronic problems with illegal conversion of residential rooms to tourist because much of the investment was put into the property that was not done before. It did not mean they did not want the rooms repaired, etc., but she wanted the Board's assistance on commitments from the Appellant to allow their Outreach people to monitor it when they advertised these rooms when completed.

They did it according to the hotel conversion ordinance and not dealt with a chronic complaint situation of musical rooming or illegal conversion of residential rooms to tourist use, etc., which they see sometimes as an aftermath where the building was empty because of the conditions of the property for so long through construction and the numerous violations that occurred. These were some of the things if the Board can assist them on commitments from the Appellant. She agreed with their inspectors they may need more than 30 days if they had commitments in the future that there will be viable rooms for residential use and professional operators, unlike in the past because it had been the same property owner all along.

They were required to keep daily logs, weekly reports to corresponding rent receipts. On the hotel conversion ordinance record on this property, they have filed the regular annual usage reports. During business hours at any point in time, they can view those logs through unannounced inspection as they will do in the future. They needed assistance to encourage them to work with their outreach people and be cognizant of what the future hold for this property and that would go a long way in assisting them. When they finished this, they were not operating the property on the basis of writing Notice of Violations and there would be a more professional operation and the building would not slide back which was their concern.

Mr. Stratton, represented the owner, agreed again and they will return to the Board on the progress and to request two months or two meetings. In respect with the outreach program, he will contact Chief Housing Inspector Bosque. Given the location, this will realistically be predominantly residential and it was close to 6th Street. Although these new rooms will be dormitory-like rooms, it will unlikely be for tourist use and will coordinate and work with her. The owners wanted no problems in the future and had great progress and this matter would not come before the Board anytime soon. When everything was done and the rooms were legal for them to occupy, the remaining tenants who wanted to move will be moved and he anticipated 2 to 4 weeks which depended on all the sign offs.

Mr. Noelke said they had 24 occupied rooms, 22 of the 24 rooms will relocate into the new rooms and two elected to stay in their existing rooms. There were no violations in those rooms and the plan was to quickly move them as soon as possible.

President Clinch asked if there were any public comment?

Karen Rucker, Community Organizer with Tenderloin Housing Clinic, Central City SRO Collaborative, and Pratibha Tekkey, Organizing Coordinator, Central City SRO Collaborative, part of Tenderloin Housing Clinic said they had walked through the building on April 26th, May 7th and May 14th. There were substantial progress and a good faith effort to repair the rooms which were very encouraging and appreciated the ability to have access to the building. However, the tenants still had a lot of concerns about what went on.

They appreciated the owner and operator who allowed and helped them walk through the building. They had opportunities to talk with some of the tenants and their concerns on how they will be moved. On each walkthrough, they talked with the operator and contractor on what was their process, strategy and plans and if there were concrete plans on how the tenants will be moved.

The improvements were all over the place and it was not systematic. They raised concerns about the bathrooms on each floor which were not touched at all. Because there were disabled tenants and people who wanted to be on one floor or the other, they asked the contractors about the bathroom issues which were not addressed at the same time. They provided the moving plans for the tenants today but no timeframe on how they will help the tenants move because the tenants may only have short notice to move and required help mentally.

During their second visit, some of the tenants knew about the relocation and some did not. Ms. Tekkey wondered if this particular plan came after yesterday's conversation they had with them. There were great progress and it would not happen if they had not been at the building every week or every other week and knew they were coming. Since the last Hearing, they did outreach in that building before but significant progress were done and allowed them access.

Robert Noelke said he appreciated the SRO visits and it was helpful to them too. President Clinch asked if there were any other public comment or from the Commissioners?

Commissioner Walker said they saw a lot of problem buildings and often times they were locked in battles and tried to make sure that the tenants lived in habitable conditions. She and the Commissioners appreciated the work done was great.

***Commissioner Walker made a motion, seconded by Commissioner Lee, to allow 60 days to cure the violations and consider supporting the Order of Abatement and hold it in abeyance for 60 days, pending the work being done and the Assessment of Costs.***

Commissioner Mar added that he also appreciated the owner working with the community group to allow them in. They needed more education of the tenants as well because of the difficult process to move them and perhaps take this opportunity to continue working with the community group to help with the tenants' education so they were not only hearing about the offer of the finished rooms from the manager but also maybe from the community group to work out what was needed for the move which would help with another voice there to educate the tenants would always be useful.

Commissioner Walker reiterated that these organizations were funded with grants from their Department to work with them. She wanted to add as part of the motion that they offered their community groups to help with the temporary relocation and re-inhabiting of the spaces and report back on the process after the 60 days if it will be resolved and it would be a great solution. Commissioner Lee disagreed with making this as part of the motion to support the Appeal and would support upholding the Order of Abatement as a separate item.

Attorney Clark said the Board can modify the Order of Abatement but they had no jurisdiction in this proceeding over anyone but the Appellant and the Department. She understood they wanted to modify the Order of Abatement to allow access but she needed to look into whether or not the Order can be modified in any way. Commissioner Walker said she was willing to separate it from the Order and hopefully they can utilize their community groups to assist them. Mr. Noelke said as a directive, they will be happy to work with them.

Commissioner McCarthy concurred with all the Commissioners. They felt this was a good model to represent when the building owner decided to do the proper thing and everybody worked together to get all the common goals that the quality of life improved in this building and he should be recognized for that. Obviously everybody concurred the next two months would probably eliminate a lot of the issues.

Based on what was said today, he was convinced they would do the proper thing regarding moving the people at the right time and did it in good faith. His position was to give him a timeframe they needed and gave the inspectors out in the field to have the right rooms ready for the right people to relocate. Commissioner Mar concurred with everything and his position was to have them relocated once they were ready.

***Commissioner Walker made the motion, seconded by Commissioner McCarthy, to uphold the Order of Abatement and hold it in abeyance for 60 days to allow all the violations to be cured and the assessment of fees.***

There was no public comment. Commission Secretary Harris made a roll call vote on the motion.

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

*The motion carried unanimously.*

**E. CONTINUED APPEALS: Request for Jurisdiction**

1. **CASE NO. 6772:** 3558 San Bruno Avenue, 3562 San Bruno Avenue, #1 & #2 and 3580 San Bruno Avenue, #1 to #4

**Owner of Record and Appellant:** Richard Thomas, Environment and Land Management, P. O. Box 877, San Francisco, CA 94577

**ACTION REQUESTED BY APPELLANT:** The Appellant is requesting more time to complete the work and for a waiver of the Assessment of Costs.

2. **CASE NO. 6774:** 3556-35564 San Bruno Avenue, AKA 1265 Girard Street

**Owner of Record and Appellant:** Richard Thomas, Environment and Land Management, P. O. Box 877, San Francisco, CA 94577

**ACTION REQUESTED BY APPELLANT:** The Appellant is requesting a waiver of the Assessment of Costs.

**NOTICE OF DECISION (Case Nos. 6772 and 6774):** Pursuant to Chapter 77 of the San Francisco Administrative Code, the AAB “may grant jurisdiction for an Appeal filed beyond the 15-day Appeal period only upon a showing by the Appellant that the delay in filing the Appeal was due to misrepresentation, mistake, or other error on the part of the City” (S.F. Admin. Code, Chapter 77.5(b)(2)). After deliberation of the evidence submitted, the AAB voted to deny the Request for Jurisdiction based on the finding that the requestor failed to demonstrate that his late filing of the Appeal beyond the 15-day Appeal period was due to misrepresentation, mistake or other error *on the part of the City*. Accordingly, the AAB concluded there was no legal basis to grant late jurisdiction in this case. Furthermore, the AAB concluded that it lacked jurisdiction over the matter because no Order of Abatement had been issued for the subject property (S.F. Building Code, 105A.2.3).

David Behr, represented the owner, said there were two Appeals related to the same building and addressed the Girard Street unit related to Appeal Case No. 6774. They filed papers yesterday and apologized for not getting them sooner but he was recently brought into this matter. The Girard unit appeared to be the sticking point for complete resolution of all of the Notice of Violations issued by the Department. The Department contended that the Gerard unit was an accessory to the commercial unit on the downstairs level but evidence indicated to the contrary that there was no evidence on record that the two were ever connected or anyone ever passed between these two units.

According to the Assessors Department's records, this building was constructed in the 1900s and they had photographs taken yesterday which might clarify the relationship between the two units. There was uncontested evidence and they had a photograph of an area that could become one day a doorway. There was no evidence it was ever broken or used as a doorway and it had very odd configuration, very narrow, very tall and it was typical of what would happened in the 1900s.

The premise of the Department's position on the Girard unit was an accessory at one time to the commercial unit downstairs and was illegally converted and carved out of a larger unit but the evidences indicated the separate unit was never connected by any means. They asked the Board to reverse the Order and finding that it was an accessory illegal unit. He emphasized the parties were on the brink of complete resolution of the entire set of Notice of Violations. In the staff report, it recognized that the parties met at the project and showed a page from the Department's records about a year ago.

Commission Secretary Harris noted they went out of sequence that the Appellant went before the Department. Attorney Clark said the Department was supposed to speak first.

Chief Housing Inspector Bosque asked if they were taking Items #1 and #2 at the same time from Section A to save time. Since this was a request for jurisdiction on Assessment of Costs, the question was the merit of this case. On the issue of the Girard apartment, it was not the position of the Department that it was an accessory commercial use. The property owner hired a structural engineer, Patrick Buscovich, to research the fact that there was not a previous building permit to legalize this apartment that front onto Girard Street and this was a double frontage property on San Bruno Avenue and Girard Street. He assisted the property owner and filed a building permit which was in the staff report. He filed a permit and later aborted the permit and he did not follow-up on legalizing this permit for the purposes of a standalone unit. It did not show on the permit history previous to any record. His agent assisted him with the filing and they signed off the permit while that was in process but the property owner aborted the process.

On or about May 23, 2012, they met with the property owner to discuss his concern with the Assessment and Costs of all the various open cases he had for the two properties on San Bruno Avenue. At that meeting was herself, Senior Housing Inspector Andrew Karcs, District Inspector Danny Mak, Mr. Thomas and his agent, a structural engineer, Patrick Buscovich and they talked about all the Assessment of Costs that were opened. Mr. Buscovich assisted him with the illegal unit issue and the Assessment of Costs associated with Complaint Tracking Number #201127 or #401 with about \$2,200 set aside and not charged to him. It was a good faith gesture because Mr. Buscovich assisted him through all the other numerous violations and



they worked with him for quite a period of time on these two properties. They followed up with that and not placed a lien but went before the Board of Supervisor last year.

In review of the detailed discussion and the various line items, they felt nothing could be taken off because they spent an exorbitant amount of time with this particular property owner. The issue of the illegal unit was not an issue of any merit because they signed off on a permit that he had to take through the process which he aborted. There was no permit history to show that it was ever a stand-alone permit, the 3-R report showed it was not, etc., and his agent also did the research and proposed it was not an issue.

They set aside those Assessments of Costs except all the other Assessment of Costs for the other property was valid. They went through with him at a meeting and whether the Board took jurisdictions or not, those were the facts the Board needed to be aware of. Right now, aside from the \$2,200, the Assessment of Costs was about \$22,000 for the open cases because of the time had accrued. You heard testimony from the Mariposa 2004 case so you can see how much staff time was spent. In a good faith gesture, about \$2,200 was set aside but they still have others.

Attorney Clark clarified this was a request for jurisdiction and the Building Code Section 77.5 stated the Commission may grant jurisdiction for an Appeal filed beyond the 15-day appeal period only upon a showing by the Appellant that the delay in filing the Appeal was due to misrepresentation, mistake or other error on the part of the City.

Commissioner Lee wanted some clarification on the two different cases. He asked about the second Case #6774, the Girard Street, if that was the four units and a commercial space and the fourth unit was considered as installed without a permit and that was the violation? Chief Inspector Bosque said it was a stand-alone unit and a violation.

Commissioner Lee said they have since placed an Order of Abatement on it and the Order of Abatement Appeal period had passed and the Appellant now asked the Board to take jurisdiction because the time had passed? Chief Inspector Bosque said he was not in compliance with the Notice of Violation, although he filed a building permit and later aborted it. They signed off the building permit and the Order of Abatement was placed on the property. She did not know if this 4-unit was permitted by the Zoning Department. She showed a photograph of a kitchen and an area that showed the type of wall which was not originally there and if it was a dwelling unit at all, it was an accessory to the commercial use and they gave them a benefit of a doubt.

Commissioner Lee asked what was the violation on the other appeal case with the two properties and if it was related to the fourth unit? Chief Inspector Bosque said it was an assorted type of things and not necessarily related to the fourth unit but there were other issues. On the second case, an Order of Abatement was placed on both properties and time had passed. Attorney Clark clarified that on Appeal #6774, there was an Order of Abatement and maybe it was confusing and not in the packet. Chief Inspector Bosque said he did not appealed the Orders of Abatement but on the issuance of the Assessment of Costs and passed beyond the 15 days allowed.

President Clinch said the Appellant can resume earlier presentation and allowed him 5 minutes. Attorney Clark clarified she did not know what was the normal practice if he was to speak to

both Appeals but she wanted to make sure he would be allotted 14 minutes. Mr. David Behr, represented the owner, wanted to speak on both Appeals and to reserve the extra time. Attorney Clark said it was up to the Board and she wanted to make sure he addressed both issues as a consolidated Appeal. Commissioner Walker believed their staff can clarify one of those questions.

Chief Inspector Bosque said on the complaint tracking number associated with the illegal units, they waived the fees when Mr. Buscovich filed a building permit application and was not scheduled to a Director's Hearing and did not have an Order. The problem was the building permit filed was aborted so they have an open case. At a meeting with them, they set aside the Assessment of Costs and the Order of Abatement was not appealed. It was the Assessment of Costs which was different in the Building Code and unclear and it was a different type of Appeal.

David Behr, represented the owner, said he heard two different messages from the Board that one unit was not illegal and the other was illegal and it was a sticking point to try to get these violations corrected. There were violations in the larger building which the owner had attempted to correct. He stated he never aborted a permit that was issued and it was his desire to fix the violations that the Department identified and required to do so. He took out a permit and the Department announced he aborted the permit and yet in his file he did not see any act by him by which he said he hereby abort to attempt to fix the violations.

The record showed there was a meeting of the Board of Representatives which discussed on the global resolution of everything. As the record stated, after reviewing the documentation, Chief Inspector Bosque approved their removal of the 9x penalty and the permit application requested to recognize their residential accessory was approved. They may have a misunderstanding that the owner did want to fix the violations, took out a permit, paid for it and attempted to comply with all the other requests and yet in his files was no mention about an aborted, discarded or abandoned attempt to fix. They would like a confirmation from this panel that any previous declaration by the Board was illegal be reversed and reversed the declaration that the owner had abandoned or aborted his permit and the owner be permitted to resume the work under the conditions of this agreement shown on the record about a year ago.

Richard Thomas, Appellant, said Chief Inspector Bosque showed the Board a part of the wall in the unit 1265 Girard and it was rented for \$1,800 a month for the last 5 years to three different tenants that were subsidized by HUD, Section 8. He had proof today and can assure them the inspections had been made every year and that it was a very nice habitable dwelling. It went back to the 1800s, and it had beautiful pine floors and very high ceilings. The alleged commercial space next door was a church and in the commercial space for 50 years. He bought the building 37 years ago and wanted to save the church.

He distributed pictures to the Board taken on the other side of the wall and the Department said the wall had an opening. It may have a case opening but it was never used. The City knew that when viewed from the bottom stairs from the church that led to a toilet room but they believed the stairs went up here and there were a set of moldings. They needed to determine if it was once connected at one time but there was no mention about the water supply pipe that went 35

feet from the church's kitchen to a toilet and a sink, which was higher than the entrance to the door.

In the Board's packet, a letter from the current reverend of the church stated there was no contact from anyone in the unit that alleged to be next door but it had a different height of four feet higher than the level of the commercial space in front. The declaration and the pictures indicated existing construction in the 1900s of a toilet room with a small stairway that led up there. On the first page showed both side of the stairs and a little handrail that the church made a modest wall here but they overlooked the fact that the commercial space needed a toilet which was the total commercial space.

The City was unwilling to give this as a standalone unit because of the fake 2x7 wall with moldings around it which they had not intended to have a door there. The height was 6 x 6 and had a very low casing to have anything there. When he purchased the building 37 years ago, they have documentation from the Assessor's Office that clearly showed there was one flat, 3 apartments and 4 units. The flat was at 3558 San Bruno Avenue, the two units at 3562 San Bruno Avenue and a third unit on the backside of the building was 165 Girard. Mr. Behr will explain the backside of the building was the same level of San Bernardino Avenue several years ago.

At some point, the City raised the height of the street and Girard was higher which took the backside of the building that required the street about 9 feet higher and made the entrance to this building the City created was much of cobblestones and required 5 or 6 flight of stairs to the entrance of 565 Girard. They distributed packets with photographs yesterday to the Building Department of this beautiful building. On the backside was Girard Avenue which was unusual because the two-story building were no longer a two-story building when part of it was removed by building up a wall where there were steps to the entrance to the unit. It was built by the City during the 10s, 30s and 40s period and there was nothing wrong with that.

Mr. Buscovich said it was built with stuff they had laid around because no one needed cobblestone streets anymore. It was relatively narrow but it was up to Federal code. Although the Building Department never said it was narrow, it was too narrow to have a garbage can in that space. The City built part of that wall which collapsed years ago and had fallen on him and his tenant. He temporarily shored it in 7 days and placed the tenants in a hotel. It took 2 ½ years to get the building permit to permanently fix the City's wall which cost him \$30,000 since he did not want to lose his units. On the last page, there was approximately 18 foot repair of the wall with a brand new retaining wall that was replaced and made it slightly larger to accommodate a garbage can and made the tenants very happy.

He was upset when he heard that he aborted the permit when in fact, he wanted to do exactly what Mr. Buscovich and Chief Inspector Bosque had agreed to make it a legal unit and there were no reason not to. It was untrue that this was an accessory unit and he had names of tenants from 1958 to 1964 and none were associated with the bicycle shop that existed before the church and a welding shop. When the church took over, they agreed to waive the cost and 9x fees. He requested to waive the 9x fees and all the problems in acquiring the permits because they said he had an illegal unit which was untrue.

President Clinch said this was combined time and the Department had 6 minutes for rebuttal.

Chief Inspector Bosque said the document the Board reviewed was a card from the Assessors' Office and they used that for the history of the property when the permit history showed something else and this did not establish a legal use but for information only. Again, they were in a situation where the building permit history did not reflect this and they needed to file a building permit to establish as a stand-alone unit. His agent agreed and filed a permit, the Department signed off and not went through the process before he aborted it. The previous permit history did not show this permit and he needed a building permit for the record otherwise Planning will have an issue. The Housing Division had approved the permit and he aborted it. The Assessment of Costs was set aside and he was not charged.

They made some progress but what he appealed also was the Assessment of Costs of all the other open cases that dealt with heat, hot water, etc. They disagreed to waive the fees because time was validly spent by the City which he should be charged for that. He talked about that particular wall because he did not file a proper permit or plan, etc. It was not the City's fault it took so long and that was on his part. The issue of the illegal unit was actually a red herring and really not the issue but it was everything else. If he would like, she would be more than happy to send him a letter explaining that particular CTS number that they were not assessing the Assessment of Costs up to this point in time but he needed to get the building permit to get that recognized within the permit history.

He had not given her any specifics after that meeting and disagreed to waive everything because of the time spent on his outstanding cases. The illegal unit was not the issue and he filed the building permit and needed to get that legalize. What happened with Planning was something he needed to research but they had sent him forward in that process with an approval based on the record that was shown to them. This did not mean legality and they had a lot of time disparate from what the building permit history indicated and this was an observation made by the Assessor's at the time.

If you look at everything from the Assessor's, they have stamped with a disclaimer that stated they see this and will charge but it did not mean it was put in with a permit and this was the City's policy and not other jurisdiction and it was the City and County of San Francisco. Mr. Buscovich gave them some data and they were able to approve the permit but he needed to follow up on the process.

The issue before the Board was the Assessment of Costs and he was not exposed with respect to the illegal unit. The CTS number on the Notice of Violation #201127401, Appeal #6774, was the illegal unit issue and the Appeal #6772 on other building issues. There were several violations outstanding and Senior Housing Inspector Karcs will give more details if any work or permits were pulled on the other violations and to clarify the life-safety issues and others, as he was at the site more than one occasion.

Andy Karcs, Senior Housing Inspector, said in regards to this Appeal #6774 on the illegal unit in question. He clarified there was no Order of Abatement on that complaint number and as Chief

Inspector Bosque explained the Assessment of Costs had been set aside. In regards to Appeal #6772 that encompassed the other residential units and there were a list of violations on replacement of windows which he had filed a permit but no work were done. The hot water heaters were replaced without the proper plumbing permit. He had filed permits, some were corrected and some had not. There were other violations that required correction on heating sources and had permits that were remediated and violations regarding rodents, etc. On Appeal #6772 with the Order of Abatement, it did not include the violations related to the 4th unit on the Girard apartment and Appeal #6774 was totally separate. There were some life-safety hazards and issues regarding windows falling out, etc.

Commissioner Melgar said she was confused and wondered why they needed to discuss Appeal #6774 if there was no Order of Abatement. Attorney Clark understood that it was a request for jurisdiction on the Board's decision to waive the Assessment of Costs.

Chief Inspector Bosque said in the application for both of these Agenda items, the Appellant listed several CTS numbers that each particular open case had Assessment of Costs. For the illegal unit, they had waived that but the Appellant included the other open cases in his Appeal. He appealed the Assessment of Costs of all the open cases on both properties which was the reason this discussion on the illegal unit was actually misleading. He wanted all the costs waived on the Assessment of Costs on all the open cases on both these side by side properties which was inappropriate and they tried to work with him and waived the Assessment of Costs on the permit associated with the illegal unit on Girard Street.

Commissioner Melgar asked if it was separated and he appealed everything together, they were not dealing with the case without an Abatement Order and the costs associated?

Chief Inspector Bosque said there may be some confusion that, about two years ago, the Building Code was changed so that the Assessment of Costs is no longer linked to the issuance of an Order. The Assessment of Costs accrued when the timeframe for compliance on the Notice of Violation occurred and they had not complied. It was different 3 or 4 years ago and what he faced here was the ambiguity in the Building Code. He wanted the Board to waive all his Assessment of Costs and it was not for appealing the issuance of Order in 15 days. He also had two more in-house Hearings with them before they send it to the Board. If they lien the property for the unpaid Assessment of Costs, they had a Hearing before the Board of Supervisors and that was part of the lien process associated with the Assessment of Costs.

Chief Bosque characterized an aborted permit in this situation as an over-the-counter permit and started the process by taking it from station-to-station and had the permit filed but he did not continue to the next station. On July 30th, his agent filed a permit on his behalf and at that point he aborted the process and not followed through review by other stations within the process which he needed to do. Deputy Director Sweeney can talk more about that process because they had that conversation.

Deputy Director Sweeney recalled Mr. Thomas came to the Department at intake to get a number to start the process. The clerks would check the permit for accuracy on the address, block, lot number and the information was properly filled out. They would direct him to across the hall for

plan check review. According to their records, Mr. Thomas did not continue the process but took the permit and walked out and it was a filed status.

Commissioner Walker asked if this was a hearing to take jurisdiction back on a process filed too late for the hearings or a hearing on an Order of Abatement described by his attorney that there had to be some criteria for them to allow that. The illegal unit was still up for any process the owner wanted to do about that. They did not have jurisdiction on that and there was no action at this point it had been taken. On the other case, there were Notice of Violations not cured and there was proper noticing and process for that. It went through an Order of Abatement and there was no legal reason to pull jurisdiction on that which was the real issue.

Commissioner McCarthy said no one had a chance to review the lawsuit until today. The lawsuit obviously reflected Cases #6772 and #6774 which concerned him. He would continue this until they were more confident about a direction. He concurred with a lot of the statements made and would prefer more time to read through this to avoid mistakes to separate in this forum and did not want to regret their decision. They were not clear on the dollar amount and what was negotiated. If the Department agreed, he proposed a continuance on this item and that the Board not take a position and revisit this at another hearing date until he was more educated.

Chief Inspector Bosque said absolutely and part of the confusion was on the Building Code which was ambiguous on the filing an Appeal within 15 days if appealing an Order of Abatement. It was also unclear on the timely filing when you come before the AAB to contest the imposition of the Assessment of Costs, as it no longer linked when the code changed and modified by the previous Director. When it happened, the Director understood it would ultimately go to the Board of Supervisors and there was a language that led them to believe he would come to the Board regarding the Assessment of Costs. She would structure a table or something on the basis of the questions today which might be more helpful to him for another meeting.

Commissioner McCarthy said maybe the table can help identify those issues and the Department and owner may concur and would have this up front in the next hearing. They would at least have a structure to approach this and not make a blanket decision. Chief Inspector Bosque said the staff was concerned the Appeal was difficult to understand because it was so convoluted and perhaps the Appellant and his attorney can clarify for them. When those documents were read, it was elaborate and difficult to decipher what exactly was being appealed and later determined he appealed all the Assessment of Costs. They could clarify for them within the next 30 days which would be very helpful for them to respond appropriately.

Vice President Melgar wanted time and clarification on both their actions, the lawsuit and what they needed to do. In putting herself in the owner's shoes, she was afraid to move certain things for fear on the loss of her property value because of the legality issue. When a property was currently on the market, they required the 3-R report which the agent would check the Assessor's Office record and not from DBI record as it was not currently available online. They reviewed that when someone bought a property and it was the same way today. She was unsure and had a lot of questions when placed in his situation in following this course of action versus the others and not meant she accepted or the other. Chief Inspector Bosque said they would be happy to

provide the historical 3-R report the seller required to give to buyer which clearly showed three units and a commercial, including the historical record.

Commissioner McCarthy said it was more of a clarification issue. If it came back to them, everybody would be able to make public comment again or just the Appellant? Attorney Clark said if it was before the Board, they were required to give the opportunity for public comment. There were a lot of things filed last night which she tried to get through but there was confusion that everyone experienced. She clarified on Item #6772, there was an Order of Abatement and time had expired. She asked if Commissioner McCarthy wanted to continue the other matter but uphold the Order of Abatement because he viewed them as linked.

Commissioner McCarthy said based on the presentation today, he cannot separate them but wanted more time to re-evaluate the case and for staff's estimation on cost to the owner in order to make a more educated decision. He was afraid to make a decision on this item because he did not know what may affect the property later on. Attorney Clark said she did not say it was inappropriate but wanted clarification on what he proposed. Deputy Director Sweeny requested the property owner to provide the water hookup order. He believed this building was built prior to 1906 and had accurate record to review the legality of the unit was the water hookup. It will tell you how many units, commercial, toilets and water closets and it was fairly accurate.

President Clinch asked the Appellant for rebuttal.

Commissioner McCray said in review of the lawsuit filed May 14th, was there any response to this from the City Attorney and the Board? Attorney Clark said she did not know and this came to her office at 5:30 p.m. last night and she reviewed it quickly but had no idea or chance to review it completely.

Commissioner McCray said this was a brief to the Board and related to the illegal unit on Item #6774. The Item #6772 had the abatement notification on it and the other was just in discussion to determine if it was legal or not. He can separate and viewed the Items #6772 and #6774 as separate matters. Although Commissioner McCarthy viewed them linked, he would separate them. Commissioner McCarthy said he saw it specifically linked together because of what was presented today and would rather see them separated and return individually to have a clarification on the cost that accrued with more information and wanted continuance before he made his decision. However, if the votes were not here, he would be fine with that, too.

Commissioner Walker clarified there was no lawsuit filed but a brief to this Hearing. The confusion was they put them both together and agreed with the Commissioners these were two separate issues. On Item #6772, there clearly was a Code Enforcement issue subsequent Abatement Order issued on violations not cured. She would not take jurisdiction on that as there was no reason to. The Item #6774 was still active in their Department not having a Director's Hearings other than a violation it was an illegal unit that had not been cured. They should not hold jurisdiction on either and have him go through the process of legalizing the illegal unit and the Department to resolve that. She did not know why they needed more time but she personally did not.

President Clinch asked to hear from the Appellant.

Richard Thomas, Appellant, apologized Mr. Buscovich had not represented him before it went before the Board of Supervisors. He backed off after he paid him \$15,000, particularly after Mr. Buscovich claimed he had a deal with Chief Inspector Bosque. He heard he can combine all this on one permit and gave Mr. Buscovich a blank check to make that deal. They did that because he was never successful in obtaining a permit and tried more than ten times on individual things because the Department record indicated he had an illegal situation he needed to clear and it took 2 1/2 years to obtain a permit.

He showed a permit that he wanted to protest because he paid \$3,000 to obtain a permit to do a small job. The work cost \$2,000 and he paid \$3,000 for work that he can pay for two because the 9x fee of \$2,317 had been penalized on something he did not do. They decided that maybe he put those aluminum windows in and maybe he did that. He had open permits he pulled and will expire on July 31st. Before going to the Board of Supervisors, he paid a lot of money to keep these things active and had opportunity to come before a Board to adjust the 9x penalty that was reasonable.

He had invited Mr. Buscovich to give him some direction but it was never his intention to abort anything. He applied for a building permit and the Building Department cancelled and revoked the permit to build a set of stairs. After the final completion a month ago, he cannot believe what happened and wanted to know why. The reason they revoked it was because he had a 3-unit building and his permit was for a 4-unit building. He thought it was resolved when the paperwork received from Mr. Buscovich and Chief Inspector Bosque showed that this will be a legal unit, etc., and maybe someone did not get the memo but he still needed permits to resolve things and wanted help from the Board.

Attorney Clark clarified that when Commissioner McCarthy referred to a lawsuit, she had not realized it was a brief and assumed it was a Code Enforcement Section and wanted to make sure but had not seen it and read the briefs.

Deputy Director Sweeney said there was a clear cut system to establish unit verification count. The Appellant could go to the 4th floor and apply for a 3-R report. When and if the 3-R report came out to 3 residential units, he could appeal that and he would be told what documents to get and meet with a member of staff on the 3rd floor. A member of staff would determine how many units and if they agreed there was evidence of a 4-unit he could proceed. He would be directed to get an administrative permit and go to Planning Department and that was how the process worked and he will get a clear cut answer through administrative process of how many units there were.

Chief Inspector Bosque said that was exactly what the Appellant did. He had Mr. Buscovich file the permit to do that and it was in his testimony.

***Commissioner McCarthy made a motion, seconded by Vice-President Melgar, to continue this item for one month if that was the full decision of the Commission and to vote and separate the two issues.***



Commissioner McCray asked what was to happen in a month?

Commissioner Mar added a friendly amendment to that motion and was concerned about those outstanding NOVs. In the units not related to the questionable illegal unit and the occupied units, he wanted to see in 30 days if they gave him the extension especially for those life-safety violations on the window permit if that was one of them and the water heater if that was another issue. If those things can be addressed in 30 days when they return with more clarifications, he would feel more comfortable with that.

President Clinch said the motion on the floor was to postpone this but within a month. Commissioner Lee said to help answer Commissioner McCray's question what will happen next month, he asked staff to actually delineate between the two Appeal cases, tell them exactly what was being appealed in one case and what was being appealed on the other, the violation associated with it and at the same time explain it to the Appellant.

Chief Inspector Bosque said she needed the assistance of the Appellant to do that. On their staff report, the Appeal applications were so convoluted that it was difficult to know what he actually appealed besides from all the Assessment of Costs. If she could get more clarification, she would provide that and perhaps his attorney can assist him further because it was very difficult for them to look at these Appeal applications and wondered what he asked for.

Mr. Behr, as counsel for the Appellant, said they will certainly cooperate with the Department to clarify all the issues that the Commissioners had raised this morning. Attorney Clark said if this was a request for jurisdiction, the Appellant should be directed to Building Code Section 77.5 to make a showing for why there was a delay in filing the Appeal as was required. She was not taking a position of whether or not the Board can grant the continuance but if they did, that was the issue before them with respect to where there was an Order of Abatement and time had expired for filing the Appeal. They needed to prove it was the fault of the City that they were delayed in filing.

Commission Secretary Harris said there was a motion for a continuance on both Cases #6772 and #6774 to the next Hearing of the Abatement Appeals Board.

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

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

*The motion carried 5 to 2.*

Commission Secretary Harris apologized they forgot to ask for public comment and will redo the roll call votes later.

Mr. Gerald Green, tenant of the apartment at 3358 San Bruno Avenue, said he lived there since 2009. He had misery over windows with lead paint and among the disabled, handicapped, bedridden and the entire building was this HIV victim and a person who was sick. There were no followed-up on plans of repairing these windows and they literally froze to death last night. He was here today because a woman cried on his shoulder and it was horrible. No efforts were made to resolve the situation so they went to the Rent Board for help but they had not responded. It was unfair and there were windows falling out.

There were two stroke victims and it was horrible. He had a notice from Mr. Mak and his supervisor that the windows were ordered and taken advantage of the situation. It was not only his windows but the entire building. He showed what was done to improve these windows with just a coat of paint on these windows. He disagreed with the 30 days because there was so much paperwork and wiring problems. There was also the fuse situation which he received a notice from PG&E. He was upset they placed a rent sign in the building and painted it over rotten wood. He cannot find help and was very upset then gave up and stayed with his attorney. He will show how they were discriminated and he was very upset with the entire plans because he had to live with a person who was sick.

Commissioner Lee clarified that, while this request for jurisdiction was pending, the status of the Order of Abatement was in full effect. Chief Housing Inspector Bosque said on the notices were in full force and in effect. The staff referred this case to the City Attorney's for reasons they have heard and it had taken a great amount of time to correct the violations and everything was opened and still moving forward.

Commission Secretary Harris said there was a motion for a continuance for 30 days until the next Hearing of the Abatement Appeals Board.

Commissioner Secretary Harris called a roll call vote again on the motion.

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

*The motion carried 5 to 2.*

#### **F. GENERAL PUBLIC COMMENT**

There was no General Public Comment.

**G. ADJOURNMENT**

*Commissioner Walker made a motion, seconded by President Clinch, that the meeting be adjourned.*

*The motion carried unanimously.*

The meeting was adjourned at 11:44 a.m.

Respectfully submitted,

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Serena Fung, Secretary

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Edited by: Sonya Harris, BIC Secretary