



ABATEMENT APPEALS BOARD
Wednesday, March 20, 2013 at 9:10 a.m.
City Hall, 1 Dr. Carlton B. Goodlett Place, Room 416
ADOPTED May 15, 2013

MINUTES

A. CALL TO ORDER and ROLL CALL.

The meeting of the Abatement Appeals Board for Wednesday, March 20, 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 (Excused)
Frank Lee, Commissioner
Warren Mar, Commissioner
Angus McCarthy, Commissioner (Excused)
Dr. James McCray, Jr., Commissioner
Debra Walker, 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
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 meeting held on November 21, 2012.

President Clinch made a motion, seconded by Commissioner Mar, to approve the November 21, 2012 minutes.

Commission Secretary Harris called for public comment and there was none.

The motion carried unanimously.

D. CONTINUED APPEALS:

Order of Abatement (Case No. 6773) and Request for Jurisdiction (Case No. 6772 & Case No. 6774)

1. CASE NO. 6773: 1316-22 Mariposa Street

Owner of Record and Appellant: Richard E. Thomas, Environment & 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.

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

Owner of Record and Appellant: Richard Thomas, Environment & 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 waiving of Assessment of Costs.

3. CASE NO. 6774: 3556-64 San Bruno Avenue AKA 1265 Girard Street

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

ACTION REQUESTED BY APPELLANT: The Appellant is requesting the waiving of all assessment of costs.

At the request of the Appellant, and with the consent of the AAB President and the Department of Building Inspection, the AAB secretary granted a continuance of the matter for 30 days.

Commission Secretary Harris said Case Nos. 6773, 6772 and 6774 have been continued and the continuances have been granted for 30 days. Commissioner Lee said the Board will take each case and start with the Continued Appeal Case No. 6773.

Edward Sweeney, Secretary to the Board, received correspondence from Richard E. Thomas, Appellant, requesting an additional 30 days for continuance due to illness and his lawyer was out of town. He spoke with the City Attorney and Commission Secretary Harris and contacted President Clinch yesterday to ask for permission if he agreed with the Department staff.

According to the City Attorney, President Clinch and Secretary Sweeney decided to give the Appellant an additional 30 days.

Commissioner Lee recalled last month the Appellant asked for a continuance and submitted a letter for a continuance and a letter that he and his engineer were not available due to vacation. Did he submit a letter this time? Secretary Sweeney said there was an additional letter from Mr. Thomas and it was in the Board's package. Commissioner Lee believed it was from last month and Commission Secretary Harris confirmed that there were two letters in the Board's package.

Commissioner Walker wanted to know what the Building Code allowed regarding continuances. Secretary Sweeney said the Building Code allowed one continuance for 60 days and he gave them one continuance for 30 days, but besides the Building Code there was past practices. Inspector Bosque said she was confused about the procedure and wanted to know if the Board or the staff grants the continuance. Commissioner Walker said the Board was asked to grant the continuance and it was on their Agenda.

Attorney Clark said the Appellant requested continuances of all three matters that were on the Agenda and according to the Rule 7.10 as discussed earlier, not the Building Code, but the rules applied to the Abatement Appeals Board, she understood that if there was no objection from the Department and the Secretary has the approval of the President, the Secretary of the Board can continue the matters. The Secretary contacted the President yesterday and he concurred and according to Secretary Sweeney there was no objection from the Department. According to the rules, the continuance can be granted.

They discussed the fact that the Building Code, Section 105.a.2, says that there should be one continuance for 60 days but in light of the stated reasons the fact that the first continuance was for 30 days and there being some ambiguity based on the fact that people had routinely been granted more than one continuance, her advice was that consistent with the rules and the practices of this Board, the continuance could be granted if the Secretary and the President agreed and there were no objections from the Department.

Commissioner Walker said she had not experienced that once an item was on the Agenda, and usually it was the Commission's decision to grant the continuance. She was concerned about the language and that there were two letters of excuses and wanted to draw a line to resolve this case and needed some input from the Commissioners. Commissioner Lee said he would also like to draw a line but the discussion was that they were authorized to give one continuance for 60 days and they gave one continuance for 30 days, so he questioned if the Board should grant a final continuance of another 30 days?

Attorney Clark said there was some ambiguity because the rules that apply to the AAB which is the Rule 7.10 says that if there is a written request to the Secretary and the Secretary has the approval of the President and there was no objection from the Department then the continuance can be granted by the Secretary. If the Department objects, the Appellant has to come before the Board to request a continuance.

Commissioner Lee asked if it were granted, was it for 30 days from now not 60 days? Attorney Clark said she believed Secretary Sweeney notified the Appellant and granted a 30-day continuance. Commissioner Mar said the Hearing had other problems because the four issues will come before the Commission. He wanted to notify the Appellant that they will hear all 4 cases in 30 days regardless if the Appellant or his representative was present and there should be no more excuses.

Commissioner Walker said she was concerned that when they reviewed the calendar if there was any public response to it, and this was one of the reasons why they should not remove from an item from the Agenda prior to the Hearing because she wanted to make sure they were in compliance with the Brown Act and all of the notifications. In reference to the rules in the future, she preferred they address that and send a notice to the public that there might be other options for handling of Appeals or a continuance if it was requested before the actual notice goes out.

Attorney Clark believed there would be many benefits to amending the rules and making these things clear. She wanted to be cautious about discussing what those amendments might be now because amending the rules was not a noticed item. She proposed to circulate some possible solutions to some of the ambiguities. The Board needed to be cautious about proceeding consistently with respect to each person that comes before them and that was her caution yesterday. She thought it would be a good idea to amend some possible amendments to the rules. Commissioner Walker confirmed that they put it on their Abatement Appeals Agenda.

Inspector Bosque clarified that they wanted to afford this Appellant the same respect and due processes as any other Appellant that comes before the Board. This is a City Attorney case and while 60 days seemed to be appropriate on the basis of the Board's determination, the Department does have a continuing staff. The Department has a continued concern about the issues at this particular building and if this went beyond the 60-day period they would not agree to that.

Commissioner McCray said this continuance requested a production of documents, and he asked what kind of workload is that or who produced them and does that go with a continuance or denial. Secretary Sweeney said it goes with continuance and he did not know what documents he requested. This case had continued for many months since the first Notice of Violation and he had plenty of time to get any documents. They were involved in court and the Department waited on what he needed from them.

F. GENERAL PUBLIC COMMENT

There was no General Public Comment for items that were on the Abatement Appeals Board Agenda.

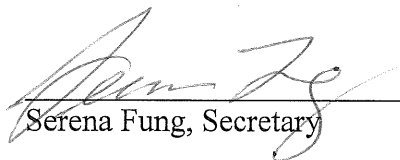
G. ADJOURNMENT

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

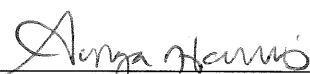
The motion carried unanimously.

The meeting was adjourned at 9:23 a.m.

Respectfully submitted,



Serena Fung, Secretary



Edited by: Sonya Harris, BIC Secretary