



ABATEMENT APPEALS BOARD
Wednesday, June 19, 2013 at 9:00 a.m.
City Hall, 1 Dr. Carlton B. Goodlett Place, Room 416
ADOPTED October 16, 2013

MINUTES

A. CALL TO ORDER and ROLL CALL.

The meeting of the Abatement Appeals Board for Wednesday, June 19, 2013 was called to order at 9:12 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 (Arrived 9:27 a.m.)
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
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 April 17, 2013.

Commissioner McCray made a motion, seconded by President Clinch, to approve the minutes of April 17, 2013.

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

The motion carried unanimously.

D. NEW APPEALS: Order of Abatement(s)

1. CASE NO. 6778: 326-330 Presidio Avenue

Owner of Record and Appellant: Brendan A. Quinlan, 63 Wawona Street,
San Francisco, CA 94127

Owner of Record and Appellant: Elizabeth Quinlan, 63 Wawona Street,
San Francisco, CA 94127

ACTION REQUESTED BY APPELLANT: The Appellant is requesting the AAB's assistance in receiving cooperation with the tenant to complete the necessary repairs.

NOTICE OF DECISION: At the request of the Appellant, the AAB continued the matter. Accordingly, the continued hearing will be held on **August 21, 2013** at 9:00 a.m., City Hall, 1 Dr. Carlton B. Goodlett Place, Room 416. You may submit additional documents and information that may support your appeal, if so, please submit 15 sets by August 5, 2013. You are required to appear personally. Failure to be represented may constitute a denial of this appeal. If you wish, you may be represented by counsel of your choice and/or bring witnesses to provide testimony.

Commission Secretary Harris said she received an announcement that there was going to be a continuance of Item D, 326-330 Presidio Avenue and the case would not be heard today.

E. CONTINUED APPEALS: Order of Abatements

1. 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 that the AAB grant jurisdiction.

NOTICE OF DECISION: Under 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

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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.

President Clinch announced that since these cases were previously heard, the Appellant and the Department would have three minutes to present their case. The Department would speak first followed by the Appellant.

Chief Inspector Bosque said these items were taken individually and not combined in case #6772. The Commissioners asked for a detailed table, Exhibit A, which was given to them today in the back of the staff report. As a convenience, they updated the staff report needed to make their decision and strongly urged the Board that the Appellant gave the proper information for their jurisdiction of this case and marred their ability in both Agenda Items #1 and #2 but they were two separate properties. At the last meeting, the Board asked for better clarification on the applications which was unclear and appeared linked to both properties. There was no clarification from the property owner but he wanted to appeal the Assessment of Costs.

Chief Inspector Bosque said Exhibit A, Case #6772, clearly showed how many Orders of Abatement were assessed on each case and identified 9 complaints when an Order of Abatement was issued.

President Clinch asked if there were any other questions?

Mr. David Barry, for the owner and Environment Land Management. Since the last Hearing, as described in the declaration of Thomas, Environment Land Management, he hired an attorney for a substantial time to clear the violations. Lisa Banales met with Senior Housing Inspector Andrew Karcs and went thoroughly each violation and determined the steps required to comply with each violation. The property management for ELM, Diane Calhoun, was authorized to assist with all the violations and obtained all the required permits.

Mr. Thomas' intention was to comply with the violations and he spoke with a plumber yesterday for an estimate and inspection of the property. The Department was very cooperative and explained the required steps to clear these violations. The various penalties they appealed from were negotiable or open for discussion when the violations were cleared. He met with Mr. Sweeney this morning and made comments from the last session on precise steps to recognize Girard Street and made some extent to moot some of the assessment penalties in Appeal #6772.

They were confused and had difficulty as illustrated by some of the exhibits in the packet and he showed them separately for their examination what they were. On one of the items involved in the Appeal was called violation 421 because those were the last three digits of the complaint number which involved the stairs at the subject property in March 20, 2011. The building owner took the steps to fix that by getting a building permit and on July, 2012 paid a penalty \$2,300.

The work was approved and cleared in January, 2013, and received a Certificate of Final Completion. This permit approval was revoked two months later which meant penalties will

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continue to accumulate although the work was done and approved because the Girard unit was on Appeal. It was not recognized as a legal unit and contrary to PG&E the gas has been turned on since 1915 and has always been legal.

President Clinch asked if there was any public comment.

Mr. Gerald Green asked if this was concurrent with 3580 San Bruno? President Clinch said Case #6772 was the units with all the violations.

Mr. Green said this activity went on for four years and there were damaged windows with disabled people living there. Mr. Thomas had a proceeding and gave the rent Board some papers. Mr. Thomas initially fixed these windows without a permit and what he perceived as fixing the problem was applying a hinge on the window. He was concerned that the Board gave Mr. Thomas 30 days and nothing happened. He wondered if he had a permit for the windows? There was a disabled person who suffered for four years. He felt time had been wasted and he lived in the property with a disabled person with a horrible condition. He had someone here to speak on behalf of the disabled and seniors.

Mr. Tony Robles said that he worked with the Senior & Disability Action and their organization served seniors and people with disabilities. Their primary concern among other things was housing and worked to ensure that elders can age in place and health and housing issues. They worked to make sure living conditions in SRO hotels were improved and worked to get an ordinance passed through DBI to ensure that grab bars and working phone jacks were installed in SRO hotels or residences. He spoke with Mr. Green and Ms. Brown who lived at San Bruno Avenue. There were many habitability issues, leaks and problems with the windows. The windows were bolted down and would prevent fire safety or emergency accessibility for the Fire Department.

Mr. Robles said that Ms. Brown who resides there has some very significant health issues. She is a disabled elder who is trying to age in place. She had a care provider, but her health problems on the habitability issues in the residence complicated the matter. The temperature was either extremely cold or extremely hot: The moisture came through various leaks, leaky refrigerator, windows that cannot open and wiring problems as well. There have been ongoing problems with the property management company that owns this and other properties.

Mr. Robles stated that there was a seven-page Bay Guardian article about this ongoing problem with this particular management ownership company. He believed there were about 300 cases that went to litigation over the last 10 years or. It was nothing new and it was a huge problem in San Francisco, particularly problems with elders in a population that is aging. They wanted to ensure these mechanisms were properly functioning correctly for the elders to age in place, and make it conducive to habitability and healthy living.

President Clinch asked if there was any further public comment, and there was none.

Commissioner Walker made a motion, seconded by Vice President Melgar, that there was no argument for taking jurisdiction back on this issue and moved to deny the request for jurisdiction.

Attorney Clark said before they voted, she wanted to clarify that Commissioner Walker's finding was the Appellant failed to show that his lateness in filing his jurisdiction request was due to a misrepresentation or error on the part of the City.

Commissioner Walker said exactly and that was the information she was looking for, some legal reason for them to take back jurisdiction on a case they have no jurisdiction over, and there was nothing presented that gave them legal reason to do that. Staff issued the Notices of Violation and notified them ongoing about all the different ones. It is great that there was some action and a willingness to try to resolve these issues prior to the Hearing, and she encouraged that to go forward but the Board did not have jurisdiction over this case and there was no argument presented.

Commissioner Lee said there were 9 Orders of Abatement assessed against these two properties and all assessed over 4 months and over 11 months ago. It was not like one single Order of Abatement that was assessed and was appealed to them. He felt they knew what the Order of Abatements were and should have seen at least one of the 9 Orders of Abatement and read through the Rules of Appeal and if they did not, somebody missed out on it.

Commissioner Mar said he would agree. By the Appellant's own admission, he had a third party representing him at this time. Unfortunately the third party did not follow the matter in a timely matter. If you hired someone to represent you, they were representing you until it changed.

Commission Secretary Harris said there was a roll call vote on the motion to deny the request for jurisdiction.

<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. 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 that the AAB grant jurisdiction.

NOTICE OF DECISION: 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. Further, 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).

President Clinch said the case was a continuance and the parties each had 3 minutes.

Chief Inspector Bosque said the staff position was the same as the previous case but did not believe the property owner had given them any information that would warrant them to take jurisdiction and strongly requested the Board not to grant jurisdiction on this case. Commissioner Lee wanted clarification if there were Orders of Abatement issued on this item? Chief Inspector Bosque said there was no Order of Abatement issued in respect to the legal use.

Mr. David Barry said his prior comments should apply equally to this. Attorney Clark said his client had three minutes to speak.

Mr. Thomas said when he found this notice, he showed good cause and was penalized by allegedly having this phantom unit among the one building in question and that building was at 3556 through 3564 San Bruno Avenue. It was that old building that they had a handout that was part of the Sanborn Map that showed the building was in existence in 1919. Upon reviewing the record himself, he found the electrical company showed it was hooked up to gas service in 1915 which was the phantom unit. It was because of this phantom unit that all of the other things that were found in the building next door and some of those things were the aluminum windows that he did not put in.

Mr. Thomas owned the building for 37 years and had not installed aluminum windows. It was installed by the previous owner when one of the old windows blew out. The old windows had a characteristic pattern that the Planning Commission and their interest wanted to maintain that appearance on the windows. They were perfectly happy to do that, however, about two years ago the Department denied his permits because of the illegal unit and it was in a different building or area. He was told to take care of this illegal unit before he could do anything.

When he met with Chief Inspector Bosque about 1 ½ years ago, she had this list of violations. There was an initial Assessment of Cost and the legalization of this property because he maintained it was legal and it was not. He was fined \$2,200 and cannot remove it because of the violation. He paid \$20,000 with the fees and 9X cost but had a building permit to fix the windows. He could not get into the tenant’s unit because the last time he was there the police came and arrested him for trespassing.

President Clinch asked for public comment or questions from the Commission.

Commissioner Walker said there had not been an Order of Abatement issued and the Board lacked jurisdiction. She believed the Department should deal with these violations and the property owner to deal with their inspectors. She would support a motion unless somebody else wanted to make it.

Vice President Melgar said when this item came before them last month, the paperwork was filed by the Appellant's attorney, prior to that their Attorney Clark did not have enough time to review and gave them thorough analysis of the issues involved but they had a month and reviewed everything and felt pretty confident she had done her due diligence and would not grant the jurisdiction. The owner certainly had some issues that he thought he knew some factual things the City did not agree with, but she did not believe it was their place to resolve these issues. Also, it was a different issue in terms of the many code violations that existed in this building.

Commissioner McCarthy said he concurred with Commissioner Melgar's comments and the Board had done their due diligence.

Commissioner Walker made a motion, seconded by Commissioner Mar, to deny the request for jurisdiction based on all of the facts there had been nothing presented which gave them any argument to take jurisdiction of this case.

Secretary Harris said there was a motion and a second to deny the request for jurisdiction and called for a roll call vote on this item.

<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.

There was no public comment.

F. GENERAL PUBLIC COMMENT

There was no General Public Comment for items not on the Abatement Appeals Board Agenda.

G. ADJOURNMENT

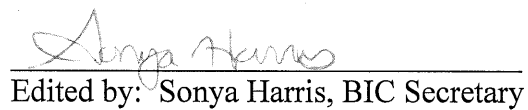
President Clinch made a motion, seconded by Commissioner Walker, that the meeting be adjourned.

The motion carried unanimously.

The meeting was adjourned at 9:40 a.m.

Respectfully submitted,


Serena Fung, Secretary


Edited by: Sonya Harris, BIC Secretary