



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

DRAFT MINUTES

A. CALL TO ORDER and ROLL CALL.

The meeting of the Abatement Appeals Board for Wednesday, April 18, 2012 was called to order at 9:00 a.m. by President Lee. The roll call was taken by Commission Secretary Sonya Harris, and a quorum was certified.

BOARD MEMBERS PRESENT:

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

Sonya Harris, Building Inspection Commission Secretary

D.B.I. REPRESENTATIVES PRESENT:

Edward Sweeney, Deputy Director of Inspection Services and Secretary to the Board
Rosemary Bosque, Chief Housing Inspector
Ronald Dicks, Housing Inspector
John Hinchion, Acting Senior Building Inspector
Teresita Sulit, Secretary

Jana Clark, Deputy City Attorney

B. ELECTION OF OFFICERS: PRESIDENT AND VICE PRESIDENT.

The next item is the election of officers for President and Vice President.

President Lee made a motion seconded by Commissioner McCarthy, to nominate Kevin Clinch for President of the Abatement Appeals Board.

There was no public comment on this item, and Secretary Harris called a roll call vote.

President Lee	Yes	Commissioner McCarthy	Yes
Vice-President Walker	Yes	Commissioner McCray	Yes
Commissioner Clinch	Yes	Commissioner Melgar	Yes
Commissioner Mar	Yes		

The motion passed unanimously.

The Commission and staff congratulated President Clinch. Secretary Harris said that the next order of business was the election of Vice-President.

Vice President Walker made a motion, seconded by Commissioner Mar, to nominate Myrna Melgar for Vice President of the Abatement Appeals Board.

There was no public comment on this item, and Secretary Harris called a roll call vote.

Commissioner Lee	Yes	Commissioner McCarthy	Yes
Commissioner Walker	Yes	Commissioner McCray	Yes
President Clinch	Yes	Commissioner Melgar	Yes
Commissioner Mar	Yes		

The motion passed unanimously.

The Commission and staff congratulated Vice-President Melgar.

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

D. APPROVAL OF MINUTES: Discussion and possible action to adopt the minutes for the meeting held on February 15, 2012.

President Clinch made a motion, seconded by Commissioner McCarthy to approve the minutes of February 15, 2012.

The motion passed unanimously.

E. CONTINUED APPEALS: Order(s) of Abatement

On Case No. 6747, 1117 Geary Boulevard, the appeal has been withdrawn and will not be heard today.

1. CASE NO. 6747: 1117 Geary Boulevard

At the beginning of the meeting, Secretary Harris announced that this case was withdrawn and would not be heard.

Owner of Record and Appellant: Emeric-Goodman Associates, P. O. Box 2210, San Francisco, CA 94126

ACTION REQUESTED BY APPELLANT: 1) Appellant requested that the Order of Abatement be reversed and Assessment of Costs be waived. 2) Appellant requested that DBI issue a permit to confirm the legality of the deck pursuant to the plans and calculations of structural design engineers based on a valuation of no more than \$5,000.00 and without any additional penalties or fees.

NOTE: Per Appellant's letter dated April 10, 2012, the appeal was withdrawn and the Appellant did not appear at the April 18, 2012 hearing. Accordingly, no action was taken by the AAB on this matter. The Order of Abatement is effective from the date the Order was issued, however the time that the matter was under appeal shall not be counted toward the time set in the order of compliance (Building Code §105A.2.8.1).

On September 21, 2011, the AAB voted to continue the case for 30 days to allow DBI staff to inspect the deck and to review the tape or transcript of the Director's Hearing. On November 16, 2011 and January 18, 2012, the AAB voted to continue the case for 60 days to allow the parties additional time to resolve the matter.

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

2. CASE NO. 6753: 554 Fillmore Street

Case No. 6753, 554 Fillmore Street is a continued appeal. Secretary Harris said the Department and the Appellant would get three minutes each since this case had been previously heard.

Owner of Record and Appellant: Megan Furth Academy, 2445 Pine Street, San Francisco, CA 94115

ACTION REQUESTED BY APPELLANT: To reverse the Order of Abatement and Assessment of Costs.

NOTE: The Code violations set forth in Notice of Violation No. 201049987 remain outstanding at the subject property. Although Appellant received notice of the April 18th Hearing, he failed to appear at the Hearing. Such failure to appear constitutes grounds to deny the appeal under S.F. Building Code §105A.2.8.1. Accordingly, the AAB voted to uphold the Order of Abatement and to impose the Assessment of Costs.

On November 16, 2011, the matter was heard and continued by law to the next AAB Hearing date.

On January 18, 2012, the AAB voted to continue the matter for 90 days to allow the parties additional time to resolve the matter.

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

Inspector John Hinchion congratulated the new Chair and Vice Chair. Address is 554 Fillmore Street, Appeal #6753, Complaint #201049987, Notice of Violations were issued. The violations related to work without a permit, removal of finishes, including stained-glass windows. The Order of Abatement was issued and staff recommended that the Commission uphold the Order of Abatement and impose an Assessment of Costs.

Commissioner Lee stated the last time this case was heard, the Board asked if the Appellant would seek building permits for this project and the Appellant said they would file a permit so where is the permit now? Inspector Hinchion stated they have a permit filed and are going through the process at this time. It is currently at Planning.

President Clinch asked if there were any further Commissioner comments? There were none. President Clinch asked if there was someone present representing the Appellant, and no one was present.

Commissioner Walker asked if the Appellant was notified, and Secretary Harris said yes they were notified. Secretary Harris asked if the motion would be to go with the Department's decision?

Secretary Harris called for public comment. There was no public comment.

Attorney Clark stated her understanding is if the Appellant fails to appear, then the Order of the Building Official shall be immediately effective from the day the Order was issued, Building Code §105a.2.8.1.

Commissioner McCarthy asked if the Board upholds this today, does the Appellant have the opportunity to appeal this again when the permit is issued by the Planning Department? Attorney Clark stated she thinks they would have the ability to appeal the Planning Department decision, but she is not sure and can look into it and will let the Commission know and this is not necessarily complete closure on this issue.

Deputy Director Edward Sweeney stated that according to his information, the building is close to being sold to a different party. Commissioner Walker stated if they need to reinforce, she would move to uphold the Department's action and uphold the Order of Abatement.

Commissioner McCarthy stated he recognizes the Appellant is not here today so this should hopefully be the end of it. Attorney Clark stated her understanding is that by failing to appear,

the Order of the Building Official shall be immediately effective. Commissioner Walker asked if there has to be a motion on this. Attorney Clark stated that this is her reading of the rule, but the Board could make a motion out of an abundance of caution, just as long as there is unanimity then she does not see any downside to voting.

Commissioner Walker made a motion, seconded by Commissioner Clinch, to uphold the abatement action.

The motion passed unanimously.

F. NEW APPEALS: Order(s) of Abatement

For new appeals, the order is that the Department will present its case and have seven minutes, next the Appellant will present and then there will be three minutes of rebuttal time for both sides, and lastly public comment.

1. CASE NO. 6757: 30 Beaumont Avenue

Owner of Record and Appellant: Tonja Herd & Barron Flemming, 1004 Magnolia Street, Oakland, CA 94607

ACTION REQUESTED BY APPELLANT: To waive the Assessment of Costs.

NOTE: The Appellant presented credible evidence that he did not receive timely notice of the January 12, 2012 Director's Hearing, which was the second Director's Hearing scheduled. Appellant did appear at the first Director's Hearing on November 3, 2011. The violations at the property have now been abated. Accordingly, the AAB voted to uphold the Order of Abatement but reduce the Assessment of Costs to \$200.00.

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

Rosemary Bosque, Chief Housing Inspector, stated this is a single-family dwelling in which a Notice of Violation was issued in March of 2010 and she pointed out an error in their staff report: They have it down as March 10th but it was March 4th. The Notice of Violation in the Commissioner's package shows a photograph which is going to help show the area of the building that is in question.

Inspector Bosque showed an aerial photograph of the property, and pointed to the wall area in question. Ms. Bosque said there was peeling paint along the wall, and this building was built prior to 1979 and this was brought to the attention of the Department through a neighborhood complaint.

Inspector Bosque said that some months after the Notice of Violation was issued in March, 2010, the work was still outstanding. The Notice of Violation was sent to the property owners as they are on file with the Assessor's Office. The property profile information is also in the package

which shows what information that is: It was an Oakland address. When Housing Inspection Services issues a Notice of Violation, they send it to the owner(s) as they are on file with that address and they post the building and both of those things were done. The Notice was posted on the property address at that site and also sent to the property owner.

Inspector Bosque stated several months later, when the Inspector went back to the property he found that the work was not done. It was then scheduled for a Director's Hearing late in 2011. Over a year later, that information was sent to the property owner by certified mail. The owner received that and showed up at the Hearing. The work was not done at that particular point and time, so the property owner asked for a continuance and was given a 30-day continuance, Chapter 1A of the San Francisco Building Code allows the Hearing Officer to do that.

Inspector Bosque said in the package there is a boiler plate that is attached to every Notice of Violation. At the time the certified mail was sent for the Director's Hearing, it clearly shows that it is the property owner's obligation to notify the Department when the work is done so they can verify by site inspection.

Inspector Bosque stated the property owner is arguing that he did not get a notice of the Director's Hearing and did not show up at the second Director's Hearing. At the time the posting was done for the second Director's Hearing, it was the inspector's observation that the work still was not done, otherwise he would have abated the complaint and would have saved himself the paperwork of having to go forward with a second hearing.

Inspector Bosque said that this is a situation where the property owner will probably tell the Board why he did not do the work in a timely manner, yet this caused the Department to hold two administrative Hearings to do all the time associated with this. Chief Bosque asked the Commission to support the Department on the basis of the documentation they have in front of them and to uphold the Assessment of Costs.

Inspector Bosque stated that she wanted to mention a distinction that this Notice of violation was issued in May of 2010 before the Building Code was changed. It does not make any difference whether the Order is issued or not, the Assessment of Cost applies after the time for compliance lapses and the work is not done. However, this Notice of Violation was issued before that particular ordinance which went into effect which was late in 2010.

Inspector Bosque stated that the Department would like to have the Order issued and have the Assessment of Cost applied and paid. Right now the cost is about \$800 and that is pretty conservative given the fact they had two hearings, but they are willing to work with the Commission and property owner on that. The time was spent and while there is a delicate balance here and they would sooner have that money put into the property, there is also the time needed to be spent for the staff having to do extended code enforcement.

Inspector Bosque said the property owner alleged in his application that he left messages for the inspector. The inspector is present and has that information. When he posted the building for the January Hearing in 2012 and the work was not done because it was right in front of them, had he seen the work was done, they would have been more than happy to abate this case.

Vice President Melgar asked what the work is like now is, and has it been abated?

Inspector Bosque stated yes, it has been abated. She has a picture of that in the package for the Commission and it is the last photograph. The Appellant has made some nice improvements and renovated the garage door if you look at different pictures. It looks much nicer and he did go ahead and take care of it: It is a success story as far as that is concerned and they commend him for doing that work, it is just a question of how much time it took.

Commissioner Lee asked when that photograph was taken? Inspector Bosque stated this particular photograph was taken within the last month or so. Commissioner Lee stated Inspector Bosque mentioned the second Director's Hearing was posted on December 30th? Inspector Bosque stated yes. Commissioner Lee asked when was the re-inspection? Inspector Bosque stated when the inspector posted the building, he would have been able to see clearly whether the work was done or not. Commissioner Lee asked if there was any photograph from that inspection? Inspector Bosque stated no, she did not believe so.

Barron Flemming, Appellant, stated this is quite a new experience for him, and from what he understands there was supposed to be a posting on the house and there is a violation. He was occupying the home as of November of 2009 and was going in and out of that home until March 4th. There was no posting of any sort and he did not get any mail. Obviously he did not get it at that address and his sister gets all the mail and that is at Magnolia Street in Oakland.

Mr. Flemming said it is his understanding that it was supposed to be certified mail and he believes that is what it says on the website. There is supposed to be a posting on the home and it is also supposed to be delivered by certified mail. Mr. Flemming said he did not get the first notification nor the third notification of the Director's meeting. The only posting he received was the last posting and that was telling him he was supposed to come here. He has a picture and fortunately he saved it as a message to a friend of his who was helping him do the work and it is dated November 1, 2011.

Mr. Flemming stated that it was also his understanding that he was supposed to scrape the paint off the side of the house and he has a picture of that, but he could not submit it because it did not have a date on it as a picture or pixel. He has it on his cell phone and would like to show that picture, so he put it on the overhead. He said all of the scraping was done for the very top and that was November 1st and he was just in the middle of doing that when he sent a text to his friend telling him that he was doing the work that was going well. He showed the picture that had the date.

Commissioner Walker asked if that was November 1st? Mr. Flemming stated November 1, 2010 and that was 2 days before the meeting. He asked during the meeting whether he could show the picture that he was doing the work and the Hearing Officer said he did not need to see it. On November 4th that is when the rest of the work was done: The scraping and the priming was complete. He does not know where the discrepancy came in but the work was done, and he has had new pictures of the painting since the meeting on November 3rd. He does not believe that they owe anything since they did the work.

Mr. Flemming said as far as March 4th, they did not get any notification and if they had, he would have acted promptly as they did in this case of notification that came sometime in October. He does not want any cost over and beyond the work that needed to be done and nobody wants to pay that kind of money. Again he does not know what was going on with the inspectors and where the discrepancy lies but the work is all done. He does not know what else to say, and wanted to make sure he got all the points in and he may be rambling but he certainly did not want to leave anything out.

Commissioner Walker asked at the hearing on March 4th, who was the Hearing Officer and what did they say to him at that Hearing? Mr. Flemming stated they said that he needed to get the work done and they had notified him as of March 4, 2010 and they stated that he had 30 days to finish the work.

Commissioner Walker asked if Mr. Flemming was supposed to come in and get the work signed off? Mr. Flemming stated he was supposed to call Inspector Dicks to make sure that the work was done. He was at the point where he got the work done. No, it was the same day of the meeting because the person that was running the meeting said he did not want to see the picture. He called Inspector Dicks that day and left a message saying that the work was done and can he could come out and see it. The scraping part was done and that is what he needed to do in order to get the lead paint off and primed.

Commissioner Walker stated she thinks he had to finish the project. Mr. Flemming stated from what he understood at that particular point, the issue was the lead paint and having the paint chips peeling off of the wall. He scraped that and primed it and that settled the issue about the peeling paint and there being any lead paint exposure.

Commissioner Walker asked if he ever had a final inspection to sign off on what the violation was? Mr. Flemming stated the final inspection came finally after he received Notice of the Director's meeting that he missed and he did not get notification of. At that point, that is when he made sure that he called the Inspector a few times. He went ahead and set a meeting maybe a week or two out and that is when the inspector came to see the property. He is new to this whole process as most people are when they first get something like that done. The inspector's outgoing message said he did not have to leave any extraneous information, just a lot number, his name, things of that nature and that is what he did. He just did not get a call back and he does not know how many times he is supposed to call. He left a message with the inspector or his secretary.

President Clinch asked if the Commissioners had any other questions? Commissioner McCarthy asked if he had any other property or just this one? Mr. Flemming stated there is only one property and it is his mother's residential property and when she passed on then he moved in.

Commissioner Lee asked if there was any Department rebuttal?

Commissioner McCray stated their chronology of events indicates that on November 3rd, he had a Director's Hearing and that he attended that Hearing. At that Hearing, he received a 30-day

continuance. Mr. Flemming stated yes that was correct.

Commissioner McCray stated that he presented a photo that showed he had already done the removal of the lead, so he asked if in the Appellant's mind when he left on November 3rd he believed that he had fulfilled the obligation? Mr. Flemming stated he believed that when he went there and offered to show the picture that the work was done, but the inspector said he did not need to see it, at that point he needed to call Inspector Dicks.

Commissioner McCray asked if he had Inspector Dicks come out and see that the work was done. Mr. Flemming stated yes, that is when he called the inspector to make sure that he was going to come out. He does not know the whole procedure but he called him and expected him to call back.

Commissioner McCray stated DBI's record indicates that on December 30th, a re-inspection Notice was posted that indicated that some of the violations remained outstanding: It said Director's Hearing notice posted. Mr. Flemming asked if it was supposed to be posted at the home, because that did not happen. Commissioner McCray asked if he got that posting? On that posting it was indicated that the inspector observed that certain violations remained outstanding and then it said in January, the next month, there was a second Director's Hearing and the property owner received a seven-day Order of Abatement on those outstanding matters. He asked if the Appellant got the notice and was aware of that? Mr. Flemming stated he received the one after the Director's meeting.

Commissioner McCray asked when Mr. Flemming spoke with the Department, if he was clear about what the outstanding obligations were? Commissioner McCray said the Appellant had taken off the lead and covered it up, but there was apparently something else left. The Department's record says general maintenance work still needed to be done. Mr. Flemming stated he did not know what that included and it was all done in November.

Commissioner McCray stated DBI's records indicate that he received something else and that the discussion about some other items still were in dispute or he was not aware of that? Mr. Flemming stated that he did not get anything else. As a matter of fact, he did give a picture of the work that was done showing that he completely painted and everything to Bernadette Perez. He gave the picture to her which in turn was supposed to go in his file and he does not know what happened: He thinks it did not make much difference because it did not have a date on it.

Mr. Flemming agreed with Commissioner McCray that DBI's records indicate that things are piling up on him and he says he did not know that and he thought he was finished.

Secretary Harris stated the Department has three minutes for rebuttal.

Inspector Bosque stated she wants to commend Mr. Fleming for giving them information on what he was aware of when he was going through this process, because the work, as you can see from the photograph he showed, was not completed on November 1st. What happened at the Director's Hearing is he asked for a continuance probably to get the work finished. Staff has the

green cards in the file that shows that he or his sister did receive the information of the Notice of Hearing that apparently said the work is still outstanding for both of the Hearings.

When the Appellant failed to show up at the second hearing that occurred in January of this year and DBI did not get contact from him and the Inspector did not see the work done when the posting occurred in late December, and the Hearing Officer did not have any other information, the Hearing Officer then chose to issue an Order.

Ms. Bosque said if the gentleman could not make the Hearing, he was still in that process and could have let the Hearing Officer know that they did not get any further information from him at that point. Ms. Bosque said the work was done after that second Hearing, but unfortunately this is a situation where they believe that the property owner did do some very good work to the front of this building but there were extended time frames and the City is out of a significant amount of time that otherwise would have been much more straightforward.

Ms. Bosque said that the Notice of Hearing was pretty clear. The Hearing Officer was able to answer any questions, and if it was unclear at that point since Mr. Flemming was getting a continuance that he needed to follow up on that. Ms. Bosque said that the Department is perfectly willing to work with the property owner on this issue.

Commissioner Lee asked who actually posted the December 30th Hearing notice and who did the re-inspection? Inspector Bosque stated she believes it was Inspector Dicks who is here in the audience and he does recall posting the building. Ms. Bosque explained the process: Staff posts a Notice of Hearing, a Notice of Violation, and the warning boiler plate and all that is put on the Notice of Hearings. The Order is the same thing so they post everything and then it is also sent by certified mail so they do both, according to the Code.

Commissioner Walker asked if Ms. Bosque had a receipt that someone received that second notice? Inspector Bosque stated for both hearings, they have the green card. Commissioner McCarthy asked if they could see the green card?

Commissioner Lee asked if Inspector Dicks is the one that re-inspected it on December 30th and posted to the building? Commissioner McCray stated his understanding that there is something going on at the house and then there is written notification going to Oakland to the sister. Inspector Bosque stated they are required by law under the Building Code to send the notification to whoever the owners are on file with the Assessor's. At some point, that is where they chose to get the documentation and that is where they sent it and they also posted the building, so both notices were sent to Oakland as you see from what they included on their package and in addition to that, the building was posted. If it was taken down, which can happen and she does not know, but they do an affidavit from the inspector and it may be back at her desk. She just had it in front of her.

Commissioner Mar stated he has a follow-up question for Inspector Dicks: With the December inspection, the work was still not completed? Inspector Ronald Dicks was sworn in and answered affirmative. Commissioner Mar stated in December, when he re-inspected, the work

that was under the NOV was not finished? Was it done as much as the Appellant's photo shows? Inspector Dicks stated correct and he knows that the work was not completed.

Commissioner McCarthy asked when Inspector Dicks did the posting if he took photographs of it? Inspector Dicks stated no, they usually do not. Commissioner McCarthy asked if that was a procedure that staff has to follow? Inspector Dicks stated there is no requirement to take a picture at that time and they are required to place the document on the building and it does not stipulate where on the building.

President Clinch asked any other questions, Commissioners?

Commissioner Mar asked Mr. Dicks when he did the re-inspection on the 30th, if he posted the notice again that said he was there and there was nobody to show him around? Inspector Dicks said that it was an external inspection, and there was no time during any of his interactions with this property that he ever stepped foot inside. Commissioner Mar asked if he just posted the Notice and left. Inspector Dicks stated yes.

Commissioner Lee asked for final rebuttal from Mr. Flemming? If there are no more questions for staff then they should have a rebuttal.

Vice President Melgar stated that she is sympathetic and she herself also had an experience with the Assessor's Office in not having proper information on file, especially when somebody first purchases a property. Commissioner Melgar said that she also knows about neighbors and anything can happen to those Notices, but the Department did in fact incur costs. Commissioner Melgar asked what Ms. Bosque meant when she said staff is willing to work with the homeowner, and what specifically did she have in mind?

Inspector Bosque stated that she is sympathetic to the property owner as well, but as you can see, they had legal notice with respect to the two Hearings. They had two hearings and asked for a continuance and they got that, so at any point in time had they showed up or communicated with the Hearing Officer that the work was done, they would have abated this case and they would not be here today. From that standpoint if it is the pleasure of the Commission, to reduce the amount then staff would be more than happy to look at that. Normally these exceed \$1,000 but the inspector in doing the billing on this has already been conservative but the Department would be more than happy to look at that again so that is what she meant by that.

Secretary Harris stated the Appellant has three minutes for rebuttal.

Mr. Flemming stated it was his understanding that, when they received the certified mail that they actually had to sign for it. The only piece of certified mail that they ever signed for was the one the Commission has on the back of their packet and the last one in January, right after the January meeting, was when they were notified they did not make the Hearing. The one on October 22, 2011, he does not see anything else in this packet that has his signature, his sister's, or her husband's signature on it. He is not sure exactly how it is supposed to work and believes they are supposed to sign for this when they get it and there were only two. Mr. Flemming asked if they are supposed to have certified mail with every correspondence that is sent?

Commissioner Walker stated there are two receipts here that are the only things staff sent out, which is for the Notices of both of the Director's Hearings, and Mr. Flemming or his representative at the Oakland address received both of them. Those were both of the Notices about the Director's Hearing and Mr. Flemming missed one of them, and attended the other. The first when you came to for the Notice on October 22nd. The one that was delivered was the second Director's Hearing, which shows the same person received it, and the Hearing was on December 2nd. Mr. Flemming stated they received it on February 9, 2012 and that is the only one they received and the one for the Director's meeting on November 3, 2011.

Commissioner Walker stated she has a question for staff: The Director's Hearing, the first one was November 3, 2011 and second one was January 12, 2012. This is marked received and the date of delivery on this card is February 9, 2012. Commissioner Walker showed Ms. Bosque the card and said this means it was delivered after the hearing.

Inspector Bosque stated it went out 10 days prior. If there was an issue of it being delivered by the Post Office, she cannot speak to that only that it went out in plenty of time for the Hearing. Commissioner Walker said where it says date stamped received and that is back to the Department.

Commissioner Walker stated the date of delivery for the January 12th Hearing is February 9th, so the Appellant actually has a point about maybe not receiving a Notice. It does not mean that it was not posted on the house and does not mean the work was done, but she is concerned about that as evidence in this case if he received the Notice after he received the Hearing date.

Inspector Bosque stated what Commissioner Walker is talking about is the date of delivery up at the upper corner, and she does see it says February 9, 2012. If that is the case she does not know because this went out way before the Hearing. Commissioner Walker stated that is important. Inspector Bosque stated if that is the case, he did not get the effective Notice of the second Director's Hearing. Commissioner Walker stated correct, in a timely fashion.

Inspector Bosque stated in a timely fashion and that is correct. He did get a notice on the first one and it does appear he was still in violation. The question is, he was given a continuance and an Order was issued. He did not have notification for that, so they have a couple of choices here. The work is done. You could excuse the Assessment of Cost. It is up to your pleasure, because he did show you information that, as of the first Hearing, the work was not done and that several months over a year after the Notice of Violation was issued. You can step into the shoes of the Hearing Officer on that issue. Ms. Bosque said that is what the Code said and it is up to the Board at this point. It is at your pleasure and it is unfortunate it is something she cannot control, and had she seen that they would have been able to resolve it sooner.

Commissioner McCarthy asked if there is a reason why staff does not take photographs of where they post the signs on the building just for their own files? Inspector Bosque stated staff takes photographs of so many things, but right now with the kind of complaint tracking system they have to be able to track those photographs which can be quite onerous for them to do so. They could but they are trying to do so much case management as it is right now to put them into the P

drive and be able to retrieve those photos. They had in some instances done that on emergency orders.

Commissioner McCarthy stated it makes sense to him if the Inspector goes all the way out to a house and puts a Notice on the building then they could take a photograph at that point, come back, and put that in the file. Inspector Bosque stated staff would be happy to do it but just tracking is hard right now under the new Excel system. As she said, for certain emergency orders they have in fact done that to make sure they have that documentation. She cannot speak to other divisions, but they have done that for certain instances. They are happy to do so and it will take a bit of time to be able to do that.

Commissioner McCarthy stated he is just a bit confused about the tracking aspect of it: Is it not just a simple process of taking a photograph, whatever device, putting them on the computer, printing that and put them in the file? Inspector Bosque stated they could do that and it is a matter of tracking all those photographs and being able to go back to the photograph, making sure that when the photograph goes into the file that somebody indicated a date and who took the photo. Ms. Bosque said ultimately under the new system they will be able to do that a little easier but they are more than happy to do it now, but it is just another step.

Commissioner McCarthy stated that staff spends a lot of time on postings so it kind of closes the gap that the Notice was put on the side of the building, it was done on this date, and the photograph is proof. Commissioner McCarthy said he thinks part of this complaint is there was never anything posted so it would really help the Commission to know that it actually was put on the right building.

Inspector Bosque stated with respect to the Notice of Violation, there was still a situation where there was a 30-day notice and they were not in compliance, the property owner had a year, did not comply. There is the responsibility on the part of the property owner to communicate with the staff and get that re-inspection that is why it is on the boiler plate, so without that cooperation, staff will not be able to get these done in a timely way.

Commissioner Walker stated there apparently was a phone call that went into this. Is there any record of that phone call coming in? Inspector Bosque stated not that the inspector recalls.

Commissioner Clinch stated they should move to public comment. Secretary Harris asked if there was any public comment on this item? Commissioner Clinch stated there is no public comment and called for a motion.

Commissioner Walker stated she thinks they have problems with noticing the second Director's Hearing. She thinks it does not negate the violation efforts that their Department has made, but the Appellant lost the ability to come back, or they do not have proof he was officially noticed in time. Commissioner Walker said she would like to make a motion to uphold the violation, but reduce the penalty significantly maybe to a quarter of what it was maybe \$200 instead of \$800. The work seems to be done at this point. Hopefully they can resolve it by that. Commissioner Melgar seconded the motion.

Commissioner Walker stated her motion was to uphold the Department's action, deny the Appeal and reduce the penalties to \$200. She thinks it would be modified. Attorney Clark stated modified to reduce the Assessment of Cost. Commissioner Melgar seconded the motion. Secretary Harris stated there was a first and second on the motion to modify the Order of Abatement and to reduce the Assessment of Cost to \$200. There was no additional public comment.

Commissioner Walker made a motion, seconded by Commissioner Melgar, to modify the Order of Abatement and reduce the Assessment of Cost to \$200.

The motion carried unanimously.

2. CASE NO. 6758: 130 Beulah Street, aka 130-132 Beulah Street

Owner of Record and Appellant: Katherine Rogers, 132 Beulah Street, San Francisco, CA 94117

ACTION REQUESTED BY APPELLANT: A moratorium regarding the existing two (2) illegal units.

NOTE: A duly noticed Hearing before the Abatement Appeals Board (AAB) concerning the property located at 130 Beulah Street, aka 130-132 Beulah Street, was scheduled for April 18, 2012. At the request of the Appellant, and with the consent of the Department of Building Inspection, the AAB continued the matter for thirty days. Accordingly, the continued Hearing will be held on June 20, 2012 at 9:00 a.m., City Hall, Dr. Carlton B. Goodlett Place, Room 416.

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

Secretary Harris stated that the Commissioners received a written request from the Appellant for a continuance, and the Department does not object to this. The Board may want to consider a motion.

Commissioner McCarthy made a motion, seconded by Commissioner Walker, for a continuance.

The motion carried unanimously.

G. RE-HEARING REQUEST:

1. CASE NO. 6756: 423-425 Noe Street

Owner of Record and Appellant: Frear S. Schmid, 7585 Valley Ford Road, Petaluma, CA 94952

ACTION REQUESTED BY APPELLANT: To rehear Appeal #6756 previously addressed by the Abatement Appeals Board on January 18, 2012.

NOTE: The Appellant refused to allow the City to inspect the subject property to determine whether the conditions set forth in Notice of Violation No. 201149851 have been corrected. Accordingly, the AAB voted to uphold the Order of Abatement and impose the Assessment of Costs.

Finding that there was no new evidence presented, the AAB voted to deny the request for rehearing. Therefore, the AAB's January 23, 2012 Notice of Decision remains in full force and effect.

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

Secretary Harris stated the Department has 7 minutes to present its case. President Clinch asked who would be speaking on behalf of the Department?

Inspector Rosemary Bosque stated this is a rehearing situation and staff included the information before. This was the case that was just recently before the AAB and the Board upheld the Hearing Officer. Staff does not have anything else to get into as far as the content, because what is before the Commission is whether or not they will grant the rehearing. In looking at the Appellant's application, staff did not see any new information.

Commissioner Lee asked what is the status of what is happening right now? He said this Board upheld the Department's decision so there is an Order of Abatement posted on the building and has anything changed since then and has the abatement been lifted?

Inspector Bosque stated that is correct. The Department has not pursued an inspection warrant to get in at this time because the petitioner asked for the rehearing. Before this was done, staff wanted the Board to address the request for the rehearing before they moved forward at all with compelling compliance.

Commissioner Lee asked before they reach the rehearing request, what would have been required to lift the Abatement? Because the Board upheld the Department's decision so the Abatement Order was placed, what happens after that?

Inspector Bosque stated with respect to this particular case, this was an issue with respect to the exterior paint. As they have talked about, they have seen from adjacent inspections that some of the work had been done but there was also peeling paint. As recently as within the past 30 days, that same inspector was again on an adjacent property perpendicular to the site elevation of this property and noticed a bunch of peeling paint and took some photographs of that. They still have a situation occurring with peeling paint on the property and not having proper containment. They still need to address that, and they also need to address access to the building for purposes of the routine inspection, which was not specifically before the Board but it was part of the discussion

at the last Abatement Appeals Board meeting.

Commissioner Lee stated his understanding is the Order of Abatement was placed on the property, and he asked if staff was waiting for the property owner to respond? Inspector Bosque stated the situation here indicated that he was not going to let anyone into the building to do an inspection. Staff will not be able to tell them until they get access, and they have not asked for access.

Commissioner Lee stated that is not what he is asking. Once the Order of Abatement is placed on the property, how does the property owner get it removed? Inspector Bosque stated to remove it he needs to prove by site inspection that all work is done. Staff needs to access and it has not been done.

Commissioner McCarthy asked if the Commissioners had any other questions, and said they would hear from the Appellant.

Attorney Clark stated what is before the Board now is a decision to grant a rehearing, but not necessarily get to the substance of the complaint but just whether or not they should grant a rehearing? Is there new evidence? She did not see any attached so that is what they would be listening to now.

Mr. Schmid stated that he was the owner of the property. To address that point he did not see anything in the rehearing application that required him to submit any new evidence. He does not know where that is coming from. He did not see anything to that effect maybe it exists, maybe it does not. Just for the record, the main primary reason for him in seeking a rehearing is in order to proceed in Superior Court to have the Board's prior decision reversed he has to exhaust all his administrative remedies, which includes this rehearing procedure which he is doing. He thinks their prior decision was erroneous, because to this date the Department has produced no regulation, law, or anything that required him at any point in time to allow as part of this process that they have to afford an inspection.

Mr. Schmid said the Department has not done that and he argued that at the last hearing. Obviously the Commissioners disagreed with him; but, notwithstanding that, given the new opportunities they failed to submit any law or regulation that says he as the property owner have to afford a Hearing. In fact the law is to the contrary. In order for them to have inspections, there has to be a law to force him to allow an inspection. More importantly as far as they are concerned a tenant inspection. The only alleged violations to this matter were all external matters. Each external matter was timely and he denied that there are any of the first instances but he dealt with all the alleged violations in a timely full fashion. He has fought every step of this proceeding in that regard. There has never been any evidence that contradicted his testimony under oath. No one ever testified that he did not do the work as specified as requested in the Orders.

Mr. Schmid stated the only issue all along has been the Department's insistence that he allows an inspection.

Mr. Schmid said DBI tried to force an internal inspection of his building without the proper law. There is no law that requires him to do that and they only tried to leverage external work that he fully completed to force him to do something that the law does not allow. With all due respect, the Commissioners also issued a similar order for him to allow an inspection of his building. They cannot order him to allow inspection of his building and he said the law it does not exist. The Department representative has told you as much. Mr. Schmid said that Ms. Bosque said the proper procedure is for DBI to get an inspection permit and they have no authority to force him to allow inspection of his property. Mr. Schmid said the AAB is are not the court and they cannot issue injunctions and that was his basis for the rehearing.

Mr. Schmid said as he stated, to exhaust his administrative remedies. There is no evidence at any stage in this proceeding that he violated any code. He quickly and properly in a timely fashion repaired any alleged violation and he submitted un-rebutted evidence that the request for repairs were done in a timely fashion, and no one has ever contradicted that. This new allegation about other peeling paint has nothing to do with this proceeding and he does not know where that is coming from and what building is “perpendicular” to his. If there are any questions, he will answer them.

Mr. Schmid stated this is a preliminary step to go into Superior Court and this is just not right. DBI cannot force people to have an inspection of their property and it is clear. The Board may want to ask the Director or staff to confirm that, because he does not know why this Order was issued directing him to allow an inspection of his property. There are no laws for that and you have no such power. Cite him the power, and then maybe he will reconsider but no one supplied it and he knows it does not exist.

Commissioner Lee asked since the January 18th Abatement Appeals Board meeting where they decided to uphold the Order of Abatement, has Mr. Schmid attempted to contact the Department to resolve that Abatement? Mr. Schmid stated no, because there is nothing to abate. He contacted the Department by virtue of this rehearing request but other than that no.

Commissioner Walker asked Mr. Schmid how he thought staff was supposed to inspect without inspecting whether or not he did the work, because they do have the right to enforce the Building Code. Mr. Schmid stated if you look at the original Order, it says you have to do such and such work by such and such a date. He went to the Hearing on that, the administrative hearing Order said in order to show evidence that the work was completed. He was the only one who testified at that Hearing and he unequivocally testified under oath the work had been completed.

Mr. Schmid said there was no contradictory evidence that it had not been completed. In fact, no one has testified other than him about the work. The inspector was not there and no one can contradict his testimony. The answer to Commissioner Walker’s question is if you go by the rules that were set forth for that Hearing, it only required that he showed up and proved that the work was done and he did that. Mr. Freidman at that Hearing heard that evidence, but he brought in this whole notion that he was duty bound to allow the inspection of the whole premises. That was the whole argument of the original Hearing that he was not cooperating with the original request for an inspection of the whole premises internal pursuant to your routine inspection, etc.

Mr. Schmid said that he did not even get into that argument because Mr. Freidman said deal with them and allow inspection. He was not talking about an external inspection, but an internal inspection of the building and the rest of his premises. The real point here is at the last Hearing this Commission, the Department itself submitted external pictures of his building that proved that the work was done. As a matter of fact, Ms. Bosque congratulated him on the work that he had done and it was clear that it was done.

Mr. Schmid stated the whole façade of the front of the building was painted. There were only two points that were at issue: The north side of the building, and she showed you pictures of the north side of the building taken from the adjacent street, 17th Street, which clearly demonstrated that the work was done. Ms. Bosque also showed a picture of the front of the building, and he believes the picture indicated the south side of the building, which projects 2-3 feet where there was allegedly flat paint. All of that was painted and un-rebutted evidence that it was painted.

Mr. Schmid said the pictures submitted by the Department proved that it was painted and he proved it was painted. He stated under oath on every occasion that he could that it was painted, and all the work was done and that takes care of the violation. The only issue here is his refusal to allow entry into the building for staff to do an inspection, and that is not an issue that ever was rightfully before any of these procedures. The Department confirmed that the only way that they can get that access is if he agreed and he has not agreed.

Mr. Schmid stated instead of doing it the right way, DBI is misusing this whole process at his expense by trying to enforce him to pay for this process by leveraging his property to force him to do it, notwithstanding his rights. His rights are very clear in the California Code that they have to get an inspection warrant, and if they refused to do that then that is their business but the bottom line is they cannot use this procedure. The Department is abusing this procedure to force him to do something contrary to what the law requires them to do, and that is not right and not fair. Fortunately from his vantage point the decision far plays this abusive power, and he welcomes anyone to show him where the Commission or the Department has the authority to enforce this inspection.

Commissioner Walker asked the staff if they were able to inspect the work that was on the violation? Inspector Bosque stated no.

President Clinch asked if there were any other comments, and called for staff rebuttal time. Secretary Harris stated the staff will go first and then the Appellant.

Inspector Bosque stated for point of clarification, the Notice of Violation boiler plate clearly showed the requirement for re-inspection and also the Code Sections are cited in the request for the routine inspection right in the first paragraph. It shows and cites the Housing Code Requirement for the inspection.

Commissioner Walker asked if that was part of the violation? Inspector Bosque stated that the property owner was saying that no one has ever showed him any code sections and she is saying the documentation in the package clearly shows that those Code Sections have been noted, and

the only other point of clarification is that on the Notice of Violation, some of that was issued based on seeing it from adjacent properties, so staff still needs the inspection to be able to deal with that and subsequently the routine inspection later on.

There was no other comment from the Commissioners and no public comment.

President Clinch made a motion, seconded by Commissioner Walker to not grant the rehearing.

The motion carried unanimously.

H. GENERAL PUBLIC COMMENTS

Secretary Harris called for general public comment for items that were not on the Abatement Appeals Board Agenda. There was no public comment.

I. ADJOURNMENT

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

The motion carried unanimously.

The meeting was adjourned at 10:15 a.m.

Respectfully submitted,

Serena Fung, Secretary

Edited by: Sonya Harris, BIC Secretary