



**BUILDING INSPECTION COMMISSION (BIC)
Department of Building Inspection (DBI)**

SPECIAL MEETING

Thursday, September 5, 2013 at 9:00 a.m.

City Hall, 1 Dr. Carlton B. Goodlett Place, Room 416

Aired Live on SFGTV Channel 78

ADOPTED November 20, 2013

MINUTES

The special meeting of the Building Inspection Commission was called to order at 9:05 a.m. by President McCarthy.

1. Call to Order and Roll Call – Roll call was taken and a quorum was certified.

COMMISSION MEMBERS PRESENT:

Angus McCarthy, **President**

Warren Mar, **Vice-President**

Frank Lee, **Commissioner**

Kevin Clinch, **Commissioner**

James McCray, Jr. **Commissioner**

Debra Walker, **Commissioner**

Myrna Melgar, **Commissioner** (Arrived at 9:25 a.m.)

Sonya Harris, **Secretary**

D.B.I. REPRESENTATIVES:

Tom Hui, **Acting Director, excused**

Edward Sweeney, **Deputy Director, Permit Services**

Daniel Lowrey, **Acting Deputy Director, Inspection Services**

Gayle Revels, **Acting Chief Financial Officer**

William Strawn, **Communications Manager**

CITY ATTORNEY REPRESENTATIVE

John Malamut, **Deputy City Attorney**

President McCarthy stated that he wanted to offer condolences for Commissioner Clinch and his family, whose mother passed away and he thanked him for being present during this difficult time.

2. Discussion and possible action regarding the Civil Grand Jury report

Mr. Bill Strawn, Legislative and Public Affairs, thanked all of the Commissioners who sent him comments and suggestions on the grand jury report. Mr. Strawn said that he made the requested changes, and added a number of points that were raised at the last Commission meeting so he hoped that essentially this is a document that everybody is satisfied with. Mr. Strawn said that the Department has until September 16th to submit the joint response to the presiding judge of the Superior court.

President McCarthy asked if Commissioners had any further comments they would like to add, because this item would need to be voted on and approved so the response could be sent to the

judge.

Vice-President Mar said that he thought there should be a distinction in some of the answers, because some of the remarks from the grand jury were specifically directed at the Building Inspection Commission while others were directed to the Department of Building Inspection which was really the staff. Vice-President Mar asked if Mr. Strawn could distinguish the two areas more clearly in the report. Mr. Strawn stated that he would make sure the distinction was clear.

Commissioner Walker stated that she agreed with Vice-President Mar that when the question was directed at the BIC it was more appropriate for the Commissioners to be more responsive. Commissioner Walker said she would not disagree with #4 regarding public perception, because she personally received the public input to remain anonymous and DBI could learn from that – It does not do any harm to agree and take action. It is hard for her to vote to support something that she knows to not be factually true, so she would like to have a more neutral position or just focus on the commitment to resolving or continuing to address those as the BIC goes forward.

Mr. Strawn said he believed the bulk of the response stated that, and everyone knows about the headlines and if Commissioner Walker agrees and partially disagrees, that is a matter of how she chooses to phrase it.

President McCarthy said that the big word that is coming out to address these concerns is “data”, and the Commission needs proof or data even though there are concerns. President McCarthy believes it is important for the Commission to take these reports seriously and have factual information and circumstances that people are complaining about to back that up. If people want to approach the Department and layout their concerns and specific issues then Acting Director Hui could address them. President McCarthy asked if there was a particular process that Commissioners would like to recommend for the public, rather than sending in emails.

Mr. Strawn stated that DBI has already budgeted for another public perception study in the coming fiscal year, and the last one was done in 2008. Mr. Strawn said that study actually reflected some comments of people having concerns about favoritism and that upon further questioning from the third party vendor that did the study, the take was that some people understand the process better than others and those who do not understand the process often attributed it to favoritism that was “out there” in a kind of vague way. Mr. Strawn said to his knowledge there is not any study or data that says specifically this particular department has that particular problem, and anyone who wants to report that there is such a thing happening there is a process to go through and evaluate the problem which is taken very seriously.

There was further Commissioner and staff discussion which addressed the following points:

- Commissioner Walker said that folks do not take newspaper articles as seriously as scientific studies, but people felt comfortable talking to the press. There is a public perception whether it is quantifiable or not.
- Commissioner Walker stated the headline tells the story more succinctly, and Mr. Strawn said yes but not always as accurately.
- Commissioner McCray asked about page 7 of the report that talked about the lack of knowledge that contributes to this perception. He said the BIC should put some benchmarks around increasing knowledge and helping individuals with the process. He

also said 85% public satisfaction mentioned in the report is a number that is quantifiable, and is a pretty good number.

- Mr. Strawn agreed that 85% is a pretty good number and if staff was in the private sector, they would be doing cart wheels over that number. Mr. Strawn said he would fine tune the language of the response.

President McCarthy called for public comment.

Mr. Joe Butler said that he was an architect in San Francisco and has been a customer of the Building Department for 26-plus years, and he agreed with the 85% number. Mr. Butler stated that he did not have any data to substantiate it or not, but for the most part the Building Department does a great job. There are however, problems in the Department and it is the 15% that the Commission should focus on rather than put a laurel on their head. DBI, according to the Civil Grand Jury, “is perceived as retaliatory providing preferential treatment to certain users, inconsistent in its Code interpretations and being dysfunctional in general” – That should really sting. Mr. Butler continued to quote, “We find no direct evidence that ethical violations at DBI are common” – He said he is not sure what they mean by “common” but it means that they are occurring. In addition the report states, “A review of complaints to a city agency revealed that periodic allegations of misconduct continue,” and he is responsible for one of those allegations or several. “Recommendation 4.1 an ethical climate survey could provide DBI leadership with a solid base for directing management attention when it is needed.” His experience as an architect representing clients has clearly shown that it is in fact the leadership, i.e. the management of the Department, that are dispensing acts of favoritism and these include: Senior management approving permit applications for final inspections on projects that have never begun, senior management ignoring plans submitted for permits which falsely describe existing conditions in spite of their own field visits that proved the lie. Senior management going on behalf of their own Department, the correct permit application fees, based on the true scope of work. Senior management ignoring bogus signatures, forged signatures of licensed professionals on submitted plans, and each document comprises separate felony counts. Senior management round filing complaints for work done without permit and tipping contractors to clear off the job when inspectors finally make the visit. Mr. Butler stated if this Commission is truly managing the Department then they might prohibit field inspectors from working outside their area, prohibit senior management from approving permit applications as if they were staff, and have plan check staff verify signatures and permit applications with the professional’s application for license renewal with the state. Also have applicants submit a page of photographs signed by a licensed professional that clearly shows the existing conditions. Finally based on his experience, the BIC must hire the new Director from outside the Department by selecting no senior managers at the root of the 15% problem.

Mr. Jerry Dratler said that he is a former Civil Grand Jury member that worked on this report. Mr. Dratler stated that he would like to comment on two aspects of the Department’s reply: On page 2 there is a comment responding to the 2007 Business Process Reengineering study that was done six years ago, there were over 180 recommendations, and saying that 25 of them were fully implemented six years later is indicative of the problem. Mr. Dratler also commented that the statement on page 9 was particularly upsetting to him, “The Department partially disagrees”. It would be helpful if the specific area of disagreement was enumerated, because it is very vague. With the grand jury finding 6 as it does not believe that the existing code enforcement policy and

practices have resulted in the backlog of unresolved violations. In fact, historical data indicates that the Department has successfully abated 95.5% of complaints and Notices of Violation since 2000. Mr. Dratler said that was 13 years ago and there is a current problem, specifically in the report (he worked on this) they reviewed all Notices of Violation for the years 2008, 2009, and 2010 and they did not do a sample, they reviewed all 8,875 notices of violation. 766 of those went to a Director's hearing within the two years and only 62% were abated, so that means the process is 38% ineffective. In the report they mentioned that 11% of the NOV's they reviewed were never closed out, and the rate for the Building, Electrical, and Plumbing divisions is 18%. Mr. Dratler stated that 18% of the NOV's issued by the divisions in 2008/09 and 2009/10 remain open so this indicates that there is a problem. These three divisions refer 5% of the open NOV's to a Director's hearing and this is half of the rate of the Housing Inspection division: The Housing Inspection division issues twice as many NOV's as the three other divisions and collects 8 times the penalty assessments. In the prior meeting which he was unable to attend, the community outreach people commented on how well the Housing Inspection Division inspectors worked with them and Housing seemed to be doing much better than DBI as a whole. Mr. Dratler said there appears to be serious process or procedure problems in the area of Building Code enforcement, and a root causes analysis needs to be conducted to determine where problems exist and solutions need to be proposed by DBI to address the problems.

President McCarthy thanked Mr. Dratler for his service on the grand jury. There was no further public comment, so President McCarthy asked to call the question.

Secretary Harris stated this is discussion and possible action to approve the response of the Civil Grand Jury report, and asked if the Commissioners would like to include the comments that were made today?

Commissioner Lee asked if this item could be continued until the next meeting since the Commission was meeting on the tenth, and he asked if another draft would be ready by then.

Commissioner Walker said that she was not going to support the response the way it is and if the BIC were all going to be on the same page, she would like the Commissioners to listen to the input, and have more discussions about this. The goal of this is to try to help DBI with the two-year plan and the Business Process Reengineering (BPR) blueprint that staff came up with so long ago is appropriate. If the BPR was implemented she thinks it would do a lot to address some of the remaining issues they have heard in the last year, for example public members have come to the BIC talking about the lack of code enforcement. They have seen the numbers and it does not really jive with what is in the report, as far as code enforcement and the number of cases that DBI resolves. Overall they are trying to achieve the same goals so she does not think the BIC needs to take a defensive stand on this, and DBI should use this as a way to acknowledge and move forward with the necessary steps for resolution. Commissioner Walker suggested that the item be continued, and hopefully take the input and hone it a little more.

President McCarthy said he thought everything has been said that had to be said regarding the report and obviously some Commissioners feel differently, and the BIC seems to be going around and focusing on the same issues such as NOV's and so on. President McCarthy believes that the response has addressed those issues and the BIC will probably not have full consensus, and Commissioner Walker will never be happy with the response which she was clear about and he

respects her position. In the format that the response is written now, he does not think it could be improved much more and if the item is continued the BIC has to be mindful of the fact that it has to be decided on before September 16th. President McCarthy reiterated that the response is not 100% for everybody but his position would be to vote on it and approve the response so that the Department could forward it to the next level.

Commissioner Melgar asked if the City Attorney could walk the Commission through what happens after this process, and what the next step is if the BIC had a majority vote today?

Mr. John Malamut, Deputy City Attorney, stated what is before the BIC today is a response to the Grand Jury. If the Commission by majority votes to submit that report, it would stand as the BIC statement or formal response with any amendments that might be suggested. If the BIC does not pass it today, the item could be continued, but as President McCarthy pointed out there is a deadline that the Department is operating under that ideally should be met in order to submit the response. If the BIC cannot reach an agreement by a quorum then there would be no formal statement from the BIC, and he assumed the Department would submit a letter just on its behalf without including the BIC as part of that.

Commissioner Melgar said that her question is, is there a process that happens at the Board of Supervisors after the document is submitted that involves the Controller to follow up on the recommendations of the Civil Grand Jury that were not addressed in the report – Does this process not continue regardless of whether or not all the Commissioners agree?

Mr. Malamut stated that he has not formally reviewed what the following steps would be after submission of the response, but he could get back to the BIC on that at another hearing and they could “march through” whatever the subsequent steps might be.

Commissioner Lee said that he supposed when the BIC submits the response to the judge, it would note how all the Commissioners voted on the response. Mr. Malamut said the BIC could certainly request that staff include what the vote is.

President McCarthy made a motion to vote on the response today and pass it on to the next level, and Commissioner Lee said that he would second it.

Secretary Harris said that there was a motion and a second, and she called for a roll call vote. Mr. Malamut asked if that motion would include the comments that were made by the Commissioners today or the letter as it had been submitted and is before the BIC?

President McCarthy said that his position is as the letter has been submitted and is before the BIC, unless the other Commissioners want to weigh in on that.

Vice-President Mar stated that he would like to add that the results of the vote and the comments of today’s meeting be forwarded to the judge as well. President McCarthy said he had no objection to that. Commissioner Melgar clarified that President McCarthy was amending the motion.

Commissioner McCray asked through the chair to Commissioner Walker, if the red section at the

bottom of page 9 pointed towards the direction she believed the Department should move? Commissioner Walker stated absolutely and it is inconsistent with the headline of not agreeing, so that is her point that the BIC agrees with the recommendations and then proceeds to defend ourselves and she does not think they should. She believes DBI has a way to go to achieve our own goals, and the Civil Grand Jury took out plans from 6 years ago and said the Department is not living up to it. Her problem is the inconsistencies within the report. Commissioner McCray asked if based on Commissioner Mar's amendment, does staff have time to do some of this editorial work and bring about the consistency that was raised?

Commissioner Lee said that he submitted his comments to Mr. Strawn as well and he had a conversation with him about those comments because he had a little trouble saying either he disagreed or agreed, yet this is not really black or white. Commissioner Lee stated that it is more so what the Department wants to do to move towards a certain goal, so he believes from what he read that the response is consistent with what the Department and the BIC want to do. Commissioner Lee said that the Commissioners should vote on whether or not the content of this reply is consistent.

President McCarthy said that he is looking for the spirit of the response, and he believes that it was captured so the Commissioners can agree to disagree.

Commissioner Melgar said that she actually likes consensus and getting the discussion on the same page. Unfortunately the BIC is in a position dictated by the process to agree or disagree, because if they agree with the findings (essentially an audit of the process) then the BIC is committed to addressing them in a certain way but if they disagree then they do not have that responsibility to commit to the auditor's findings of where DBI's processes are. Two areas where she thinks the Department is vulnerable are: Notices of Violations and the customer routing system. She believes the BIC should acknowledge that there is a public perception, whether or not it is based on fact, since there are folks looking at the Commissioners to represent the public. Also, since she is the person in the public seat she has a responsibility to at least acknowledge what people are thinking. Commissioner Melgar reiterated that those two areas are problematic since the wording states that the BIC does not agree with the findings, but she thinks it should state that the BIC partially agrees or agrees and these are the areas DBI commits to doing some work.

Commissioner Walker thanked Commissioner Melgar for pulling together her point and said that she totally agreed with her input about code enforcement. Commissioner Walker stated that when she compared this grand jury report to the one that was done a while back DBI has made huge strides, and everybody in the Department should be proud of that. She said there are things remaining that the Department needs to do, and that is what the focus is on so how the BIC enters the response is important in bringing DBI together and could show how to do things even better. Commissioner Walker said that she would not support the response if those issues were not addressed, but she would support it if the issues are addressed.

Commissioner McCray asked again if staff has time to make edits on the basis of what was said today. President McCarthy said that he believes the response is going to address the Commissioner's concerns and the problem is the Department is in a renaissance, things are changing, and DBI is trying to get things in line but it takes time. He thinks what the Commissioners are asking for is something that cannot be delivered by next week on the 10th, so

what he is trying to convey is the BIC will never have consensus on every issue and should agree to disagree. President McCarthy stated the present response is as close as the Commission is going to get, and at this stage the Department should move forward duly noted with the comments of the Commissioners who disagree on the issues.

Vice-President Mar said that he knows the BIC is under time constraints but he feels that this could be resolved easily with two amendments: 1) Change point four, from disagree to partially agree. 2) Regarding the NOV's, that should be changed from disagree to partially agree. Vice-President Mar stated if those amendments were made then he would vote to support the response as well.

Secretary Harris reminded the Commissioners that they were under a time constraint.

President McCarthy acknowledged the comment, but said that this was a good, healthy conversation for the Commissioners to have. President McCarthy asked Mr. Strawn if the amendments could be made so that the BIC could have consensus. Mr. Strawn stated that he believed the Director would agree, and he was not going to oppose the will of the Commission.

President McCarthy made a motion, seconded by Commissioner Lee, to approve the joint DBI & BIC response to the Civil Grand Jury report with the friendly amendment by Vice-President Mar: Finding number four and finding number six should state the Department partially agrees with the Civil Grand Jury findings.

Secretary Harris asked for clarification. Deputy City Attorney Malamut said the motion which has been amended a number of times, in summation is to approve the letter as it has been prepared and with the editorial comments that the commissioners offered earlier in the hearing. Mr. Malamut said in addition it would be the amendments that Commissioner Mar has just offered to two of the provisions.

Secretary Harris called for a roll call vote:

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

The motion carried unanimously.

RESOLUTION NO. BIC 039-13

3. Public Employee Appointment – Director of the Department of Building Inspection.

Discussion and possible action to interview candidates for the position of Director of the Department of Building Inspection.

Secretary Harris made a brief announcement regarding Item 3: “The BIC will start its Closed Session here at City Hall in Room 416 and the Closed Session portion of the meeting will then be moved to an undisclosed off site location and when the Closed Session portion of the meeting is complete the BIC will reconvene in public at DBI offices at 1660 Mission Street, and vote on whether to disclose any or all of the discussions held in Closed Session. This public portion of the meeting at DBI offices at 1660 Mission Street will not be televised.”

- a. Public Comment on all matters pertaining to the Closed Session.

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

- b. Possible action to convene a Closed Session.
- c. **CLOSED SESSION:** Pursuant to Government Code Section 54957(b)(1) and the San Francisco Administrative Code Section 67.10(b).

Commissioner Lee made a motion, seconded by Commissioner Walker, to convene a Closed Session. The motion carried unanimously.

RESOLUTION NO. BIC 040-13

The Commissioners went into Closed Session at 9:50 a.m.

- d. Reconvene in Open Session to vote on whether to disclose any or all discussions held in Closed Session (Administrative Code Section 67.10(b)). (The BIC shall reconvene in open session at DBI offices at 1660 Mission Street, 6th floor Conference Room, #6034.)

Commissioner Lee made a motion, seconded by Vice-President Mar, to reconvene in Open Session and not disclose any or all discussions held in Closed Session. The motion carried unanimously.

RESOLUTION NO. BIC 041-13

The Commissioners reconvened in Open Session at 2:00 p.m.

Secretary Harris took roll call and Commissioners McCarthy, Mar, McCray, and Lee were in attendance.

4. Adjournment.

Vice-President Mar made a motion, seconded by Commissioner Lee, that the meeting be adjourned. The motion carried unanimously.

RESOLUTION NO. BIC 042-13

The meeting was adjourned at 2:04 p.m.

Respectfully submitted,



Sonya Harris
Commission Secretary