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Via US Mail and Email: dbi.codeenforcement@sfgov.org

Alysabeth Alexander-Tut, President
Abatement Appeals Board
49 South Van Ness Avenue, Suite 400
San Francisco, CA 94103-1226

RE: Brief in Support of Appeal of Director's Order 202174624A
Address: 2195 Green Street, Unit 5, Blk 0557/ Lot 041
Request: Reversal of Order of Abatement

Dear President Alexander-Tut, and Commissioners of the Abatement Appeals Board:

Pamela Wiget, the owner of the exclusive use rights to the roof deck patio at 2195 Green Street *since 1983*, appeals the Director's issuance of the Order that effectively requires the cessation of use of the roof deck patio area that was built *in 1981* pursuant to approved plans and with the benefit of inspections by the Bureau of Building Inspection (BBI).¹ (**Ex. A:** Order of Abatement No. 202174624 A [the underlying NOV is at **Ex. C**, Declaration of Niall Vignoles in Opposition of NOV (Vignoles Decl.), ¶ 1 re: Ex. A. NOV.)

The Director's first error warranting reversal is the finding that BBI did not approve the roof deck patio, because the Department did not find a clear enough approval in its records (**Ex. C**, Vignoles Decl., Ex A, NOV) while asserting "we [the Department] do have [all] the records here." (**Ex. F.**, Transcript of Oct. 6 Director's Hearing, 11:1-2.) This finding is in error because, prior to 1983- at the earliest- BBI often lost records, such that the absence of a record does not evidence that BBI did not approve the roof deck. Rather, "construction consultants who regularly research DBI's digitized permit archives for records dating to the early-1980s know not to expect to find the same degree of completeness found by the late-1980s -- BBI's technical/bureaucratic burdens ... during th[e] multiyear transition from the late-1970s microfilming era to the large-scale

¹ Prior to 1994, the Department of Building Inspection (interchangeably, DBI or the Department) was a division of the Department of Public Works and was titled the Bureau of Building Inspection (BBI). See sfdbi.org/about-us.

computerization protocols ... [were] challenging.” (Ex. B, November 4, 2021, Report of Avelar and Associates (Avelar Report), Pg 7-8, Sec. C.)

The Director's second error warranting reversal of the Order is the failure to properly consider the records the Department does have that support a determination that BBI approved the construction of the roof deck patio and inspected the roof deck patio before issuing its 1981 certificate of final completion and occupancy of the roof level occupancy of the building. It is the expert opinion of Avelar and Associates that “the BBI-approved and inspected “Tiled Platform” and far broader “Tile on Roof” areas of roof deck-tiling work (totaling 2,982 square feet) identified at Figures 1 and 2 below ... confirm the Bureau's assessment that this roof deck served as an “occupiable” extension of the approved rooftop Pentroom.” (Ex. B, Avelar Report, Pg 1-2.) One of the many bases for this finding is that Avelar found the drawings that included roof deck-tiling, as part of Permit # 8004697, were stamped “APPROVED” on October 29, 1980. (See Ex. B, Avelar Report, Pg. 4-5. Sec. C.)²

For the past 38 years, Ms. Wiget has continuously used the entire roof as a roof deck patio adjacent to the Pentroom, pursuant to subdivision map the City approved in 1982. (Ex. E, Wiget Declaration of Pamela Wiget (Wiget Decl.), ¶¶ 2 and 3.)

As shown below, BBI, DBI and the Courts have repeatedly acknowledged the existence and legality of the roof deck. The roof deck is not currently tiled only because the weight of the previous high-grade stone tile was too heavy, but the use of the roof as a deck has been continuous since at least 1983.

Now, in 2021, pursuant to the incessant complaints of one litigious neighbor (Complainant) at the Property who did not purchase and does not share in Ms. Wiget's exclusive use of the roof deck patio, the Department has issued a notice of violation for her use of the long-standing roof deck patio based on a purported lack of permit for the roof deck patio. The roof deck patio is a legal nonconforming use of the Property, which is a valuable feature of the Property.

Avelar Associates, a respected Bay Area code compliance and design firm, reviewed the historical permit records and concluded, “In short, the above-cited evidence and analysis compels us to conclude that in 1981 (in conjunction with the “legalization”

² Ms. Wiget cannot provide the set of plans stamped “APPROVED” because the Department will not provide the drawings to Ms. Wiget, due to State law regarding copyright issues.

of the long-existing pentroom) BBI approved and accepted the surrounding roof areas as “occupiable.”³ (**Ex. B**, Avelar Report, Pg 11.)

Allowing the Director's Order to stand would set a dangerous precedent for owners of older buildings with long standing construction and uses. The Board should reverse the Order.

FACTS⁴

On May 27, 1980, the project sponsor for 2195 Green Street filed an application to join four previous permits [439770, 444073, 456494 and 457897] for renovation of the 10-unit property. The permits were joined under one permit, Permit No.8004697, which allows for thorough consideration by BBI during the approval process. BBI approved the permit application on October 29, 1980. (**Ex. B**, Avelar Report, Pg 6, Sec. D.)

In September 1980, BBI received a drawing showing how tiling was to be laid on the roof deck patio, showing the roof deck patio area to be covered with tile was over 2,900 square feet, and highlighting the fire escape extending to 4th floor level of occupancy (the roof). (**Ex. B**, Avelar Report, Pg 6, Sec. D.).

On October 29, 1980, BBI stamped the set of drawings for Permit # 8004697 with the large area of roof deck tiling called out and shown as APPROVED. (**Ex. B**, Pg 4-5, Sec. C.). BBI required the project sponsor to keep the approved plan set on the job site for the penthouse room rebuild. (**Ex. B**, Avelar Report, Pg 4, comment 2 of Sec. D.)

On February 5, 1981, the architect, general contractor and tile contractor met on-site to discuss the roof tile installation. (**Ex. C**, Vignoles Decl., ¶ 5 re: Ex. E, Feb 5, 1981, Meeting Notes.)

On February 6, 1981, a communication between architect, general contractor and tile contractor, regarding a meeting the previous day, referenced the tile being installed on the roof “from parapet to parapet” with the import of the slope of the tile being how “furniture will sit” on the tile. (**Ex. C**, Vignoles Decl., ¶ 5 re: Ex. F, Feb 6, 1981, Meeting Notes.)

³ The authors of the Avelar Report reviewed all of the Ex. C exhibits, the Ex. D 80-page production from DBI, CBI's computer files and BBI annual reports. (**Ex. B**, Avelar Report, Pg 1.). The Avelar Report authors' CVs are attached as **Exhibits G and H**.

⁴ The volume of this appeal filing is unavoidably large due to the fact that there is 40 years' worth of evidence regarding the roof deck approvals, acknowledgments and use to consider.

A drawing for Permit No. 8010873 shows that, on March 1, 1981, BBI approved plans entitled “Details- Pentroom & Patio [&] Bath Relocation” that showed specific details for the “New Patio” associated with the Pentroom. (Ex. C, Vignoles Decl. ¶¶ 8 & 11 re: Exs. H & K, Tile Platform Plans.) According to Avelar’s expert opinion, “the new tiled “platform” structural details approved via Building Permit #8010873 were intended to *supplement* (not *supplant*) the more-extensive tiling work previously approved under Building Permit #8004697.” (Ex. B. Avelar Report, Pg 6, Sec. D [emphases in original].)

By May 26, 1981, Cal Tile had completed 100% of labor “to install tile work for completion of pentroom roof deck at 2195 Green Street.” (Ex. B. Avelar Report, Pg 6, Sec. D.).

On July 13, 1981, BBI issued a certificate of final completion and occupancy (CFC), based on Nos. 8010873 & 8000448 for renovation of 2195 Green Street Penthouse (pentroom)⁵ for the pentroom which looks out at the built roof deck patio. (Ex. B. Avelar Report, Pg 6, Sec. D.) The CFC was supported by a job card that evidences repeated inspections including the final inspection on July 13, 1981. (Ex. B. Avelar Report, Pg 6, Sec. D.)

On August 3, 1981, the BBI’s Superintendent confirmed that the 2195 Green Street – which already had the roof deck patio constructed –had been fully inspected and the building complied with all applicable codes and constituted safe and sanitary housing. (Ex. B. Avelar Report, Pg 8-9, Sec. F.)

On October 8, 1981, the project sponsor submitted plans for a “greenhouse at roof level.” BBI approved the plan set that specifically stated that the proposed greenhouse was associated with an “*existing tile deck.*” (Ex. B, Avelar Report, Pg 6, Sec. D, comments 6 & 7.)

In 1982, the Property was converted into condominiums with Plat Map and CC&Rs. On February 16 and 17, 1982, the City’s Recorder-Assessor recorded a condominium map that showed 2195 Green Street had a roof deck patio adjacent to the Pentroom on the roof level of 2195 Green Street. The patio area shown in the map was unbounded except by the parapets. The condominium map, at Page 1, Note 14, stated that “PA” meant “Patio Area” and that the patio areas could be made exclusive to a particular unit. (Ex. C, ¶¶ 13 & 14 re: Ex. M: Recorded Plat Map & Ex. N, Recorded CC&Rs.)

⁵ The Pentroom is approved “without [a]cooking” area so it is not a *penthouse*. (See Ex. B. Avelar Report, Pg 8, Sec. F, also Pg. 10, Sec. G re: legalization.)

On October 19, 1982, BBI issued a Report of Residential Building Record showing that the BBI had concluded that the Pentroom (or 4th Floor of Occupancy) had a second means of egress from the roof level occupancy— namely the fire escape extension at the front of the building. (**Ex. B**, Avelar Report, Pg 10, bottom of Sec. G.).

In or about August 1983, Ms. Wiget, Responding Party, purchased her unit, unit 5, in 2195 Green Street. Her purchase included an exclusive use easement over the Pentroom and the roof deck patio adjacent to the Pentroom. (**Exhibit E**, Wiget Decl., ¶ 1.)

In or about 1985, the Homeowners' Association (HOA) discovered leaks under the roof deck patio. From 1995 to 2003, Ms. Wiget and the HOA engaged in a three-phase trial regarding the leaks and the weight of the roof deck pavers over Ms. Wiget's exclusive-use roof deck patio. The Superior Court determined that although the HOA could remove the previously approved pavers from the roof if they caused leaks, Ms. Wiget had the continuing right to use the area as a roof deck. The Court also ruled that the HOA has the duty to reinstall a roof deck paver system when pavers are manufactured that are within the building's loadbearing tolerance. (**Ex. C**, Vignoles Decl., ¶ 16 re: Ex. P, 2003 Order of the Court in Case No. 972151.). Ms. Wiget continued to use the roof as a roof deck patio during the litigation and following the Court-ordered removal of tile from the roof deck patio. (**Ex. E**, Wiget Decl., ¶ 3.)

On or about October 31, 1997, during the HOA litigation, DBI approved and issued Permit No. 8-09722100 to Ms. Wiget allowing her to reroof and restore the roof deck.⁶ The permit issued was to "Complete re-roofing started 9-1-94, permit 753522; work consists of roof deck restoration." [Emphasis added.] (**Ex. C**, Vignoles Decl. re: Ex Q, 1997 Roof Deck Restoration permit.) Ms. Wiget had to let the permit expire due to the above litigation with the HOA and the non-existence of commercially available, appropriately weighted roof deck surfacing material. (**Ex. E**, Wiget Decl., ¶ 4.)

In or about 2012, the Complainant looked to purchase a unit in 2195 Green Street. Ms. Wiget informed Complainant, during an interview, before Complainant purchased his unit, that Wiget owned the exclusive use rights to the roof deck patio area over the top floor unit Complainant was considering purchasing. Ms. Wiget explained her use rights and continuous use since her purchase in 1983. Complainant elected to purchase the unit below Ms. Wiget's exclusive-use roof deck patio area. (**Ex. E**, Wiget Decl., ¶ 5.)

⁶ The Department, in the NOV underlying the Order in question, incorrectly asserts that this permit was applied for but the Department did not issue it. On pages 1 and 7 of the permit packet, the Department notes that the Department approved and *issued* the permit.

In or about 2016, Complainant was president of the HOA and, in bad faith, sought a ruling from the Department that Ms. Wiget did not have an approved roof deck patio. Complainant styled this effort as a request to install roof pavers over Ms. Wiget's exclusive-use area on the roof. Complainant failed to provide the Department with all records showing Ms. Wiget's continuing right to use the roof deck space pursuant to the plan approved in 1981, and Ms. Wiget's continuing occupancy of the exclusive-use roof deck patio area since 1983. (*See Ex. C, Vignoles Decl., ¶ 18 re: Ex. R, 2016 Permit Application Documents.*)

Also in 2016, Complainant sought, in the San Francisco Superior Court, to reverse the 2003 Superior Court's ruling. In or about September 20, 2017, Ms. Wiget defeated Complainant's effort. The Superior Court left standing the 2003 ruling confirming Ms. Wiget's right to use the exclusive-use roof deck patio space as a roof deck and the HOA's continuing obligation to retile her exclusive-use space roof deck patio space when the weight-appropriate pavers were available for installation. (*Ex. C, Vignoles Decl., ¶ 19 re: Ex. S, 2017 Ruling.*)

In 2021, Complainant, who is no longer a member of the HOA board, initiated baseless demands for prelitigation mediation with the HOA asserting that the HOA must deny Ms. Wiget her rights to her exclusive-use roof deck patio though her rights are recorded as part of the condominium plan for 2195 Green Street.⁷

At the Director's Hearing, the Director's Representative asserted that it bears no burden in showing a 40-year-old use is illegal, from a time when the department regularly mishandled documents, and further asserted that "we [the Department] do have [all] the records" so could issue the Order. (*Ex. F., Hearing Transcript, 10:27-11:2.*)

LEGAL ANALYSIS

In a 2008 administrative law proceeding, the administrative Judge held that the "evidence shows that the BBI did not begin keeping electronic permit records until 1983, and BBI paper records kept prior to 1983 could not always be located. Therefore, it is difficult to conclude that the absence of a permit record proves that no permit was issued [for the disputed use]." (*Ex. C, Vignoles Decl.'s Ex. T, Decision in Administrative Hearing of San Francisco Planning Department (2008) Case No. 9386 ("ALJ Decision") Pg. 18:10-13.*) The Administrative Law Judge held that, though DBI and Planning Department could not find permits for the long-standing use of property as a location for

⁷The attorney representing the HOA has confirmed that it is the HOA's position that Ms. Wiget has the right to her exclusive-use roof deck patio and that the HOA will soon be seeking permits to reinstall the roof deck patio tiling as required by the Superior Court.

advertising, BBI and Planning may well have approved the use pursuant to permit. (ALJ Decision, ¶22.) The ALJ further held that it is the City's burden to prove, by a preponderance of the evidence, that the Department did not issue permits for the alleged illegal use. Here, the Department has to prove that its poor record keeping did not involve the subject property. Only when the Department can show that no permit was issued for the challenged use – not simply that it cannot find the permit – can the Department hold the use is illegal. The evidence of continuous use from a time when the City could have issued a permit for the challenged use creates the presumption that the use began with legally obtained permits.

“Zoning ordinances and other land use regulations customarily exempt existing uses to avoid questions as to the constitutionality of their application to those uses. The rights of users of property as those rights existed at the time of the adoption of a zoning ordinance are well recognized and have always been protected.” *Hansen Bros. Enterprises, Inc. v. Bd. of Supervisors* (1996) 12 Cal. 4th 533, 552 [marks and citation omitted]. Thus, the Department cannot, except under special circumstances, hold a continuing use illegal or seek to cease the continuing use due to zoning changes.⁸

ARGUMENT

- I. **THE ORDER WAS ISSUED IN ERROR AND THE DECISION TO ISSUE THE ORDER SHOULD BE REVERSED.**
 - A. **The Department Cannot Prove That It BBI Did Not Issue A Permit For The Roof Deck Patio Use in Question.**

The Department's Notice of Violation 202174624's claims that Ms. Wiget's use of the roof deck patio is illegal because the Department *cannot find* a permit allowing the use. As discussed above, the Department bears the burden of proving no permit was issued authorizing Ms. Wiget's use of the roof deck patio. Here, the Department did not begin to maintain records well until sometime in 1983. The renovation at the Property was initiated under permits issued in and before 1981. The Department approved Pentroom Roof Deck plans on October 29, 1980, as part of the work to be performed under Permit No. 8004697. To invalidate Ms. Wiget's use of the roof deck patio, the Department would have to prove that no permits ever exist and that BBI's methods and adequacy of record keeping for the permits for the 1981 renovation of the Property were

⁸ The NOV does not assert illegal construction. Only the removal of Ms. Wiget's furniture and plants is required. Ms. Wiget has a vested right, however, to the use of the patio and to reconstruction of tiling atop her roof deck patio under ample case law regarding vested rights to allowed or permitted construction as well as the Superior Court order. Wiget and the HOA will soon be seeking Department approval to reconstruct the surface of the roof deck patio.

somehow different and better than the normal record keeping at a time when “[BBI] paper records kept prior to 1983 could not always be located.”⁹ (Ex. C, Vignoles Dec., Ex. T, *ALJ Decision*, 18:11-12.)

Since the October 6, 2021, hearing, the Department responded to Ms. Wiget's Public Records Act (“PRA”) request for all records the Department has for the subject 10-unit building for operative period of 1978-1982. In response, the Department produced only 80 pages (Ex. D, PRA Response), despite the fact that the *entire* building went through major renovations, including installation of fire sprinklers and of new garages and the renovation of all ten units in the building. The Department's response to the PRA request confirms that the Department records are remarkably incomplete. “The DBI Records produced in response to the public records request totaled a scant 80 pages (including 14 pages of plumbing permit records not relevant to our analysis). Considering the wide scope and extent of the renovation work encompassed by the multiple building permits cited above, the paucity of inspection notes and records in DBI's production is remarkable.” (Ex. B, Avelar Report, Pg. 10.) The Avelar Report notes numerous specific examples of missing documents:

“Specifically, considering the broad extent of the penthouse/pentroom-related work encompassed by Permit #8004697 (which incorporated permits #7807436, #7812493, and #7905271) and Permit #8010873, it can be assumed that multiple plan review and/or inspection records did not survive this early-1980s transition to computerized record-copying. ...

Further, in regard to Building Permit #7812493 (issued on January 11, 1979), the DBI Records provide scant explanation of BBI's subsequent decision (later overruled by the Board of Permit Appeals)¹⁵ to rescind this permit's approval “*subject to legalization approval*”¹⁶ of associated prior Building Permit #780436, which also had been put on hold by BBI.

Importantly, the provided DBI Records do not contain a copy of Building Permit #780436 or any specific record explaining why this missing permit initially had been rejected by BBI. (Ex. B, Avelar Report, Pg 10.)

The Avelar report further states:

⁹ The NOV states that the Department merely did “a search,” without any supporting evidence of the extent of search. The efforts of the Department do not satisfy the standard set forth in the ALJ Decision.

“It is our professional assessment that systemic lapses ... in BBI’s record-copying protocols and practices in the early-1980s very likely led to the destruction of additional records that would further confirm our opinion that Cal Tile’s wide-scale (totaling 2,982 sf) tiling work in 1981, as approved, inspected, and accepted by BBI, constituted recognition that this roof was “occupiable.” (Ex. B, Avelar Report, Pg 7.)

The Director is simply wrong in asserting that the Department has all the records.

The Department may only base notices of violations on lack of found permit for uses and construction *after* BBI began electronic record keeping in 1983. Where the uses and construction predate such record keeping, the Department must present affirmative evidence that BBI did not issue required permit(s) and that the use and construction was performed illegally.

Here, the Department has not – and cannot – show that the roof deck patio construction was performed without permit and that the use of the roof as a deck patio began illegally. Thus, the Board should reverse the issuance of Order of Abatement 202174624A as issued in error.

B. The Evidence Shows that the 1980 Project Sponsor Sought And Received Permits and a Certificate of Final Completion and Occupancy for a Roof Deck Patio of Approximately 2,982 Square Feet.

Given the missing records and the holding in the *ALJ Decision*, the burden is on the Department to establish that the roof deck was not properly approved. However, assuming arguendo that was not the case, despite BBI’s poor record-keeping, the records that do exist reflect that the entire 1980-81 renovation of the Property was performed with the benefit of permits and inspection. The chronology evidenced by the records available shows a lawful process that complied with Department directives, so that the project sponsor could then seek City approval to subdivide the Property into condominiums.

Avelar and Associates found that the tiled, occupiable roof deck was approved as part of the 50-page set of approved drawings for the work performed in 1980-1981:

“In summary, analysis of various archived DBI records has identified multiple pieces of evidence that indicate that BBI personnel formally approved, inspected, and accepted the extensive roof deck-tiling work carried out in 1981 by Cal Tile.” (Ex. B, Avelar Report, Pg 6; *see also Id.*, Pg 10.) Further, Avelar found “no

substantive evidence within the DBI Records to the contrary.” (Ex. B, Avelar Report, Pg 6, *see also Id.*, Pg 10.) The finding of occupiable roof deck is that the roof deck tile surface “provided a continuous egress route from the lawfully occupiable pentroom to the fire escape system” that was the “code-required secondary means of emergency egress” and thus part of the occupiable space at the roof level. (*see Ex. B, Avelar Report, Pg 8, Sec. F.*) Further, “the broad extent (and associated time and cost) of this high-quality glazed tiling demonstrates that it was intended for lifestyle enjoyment usages...- not just incidental usage by maintenance personnel.” (Ex. B. Avelar Report, Pg 3-4, Sec. A & B.)

Clearly BBI approved roof deck occupancy at the Property. BBI inspected the roof deck as the inspector had to walk from the Pentroom to the new second means of egress. The approved project drawings reflect a tiled roof deck patio covering the roof from “parapet to parapet” for approximately 2,982 sq. ft.¹⁰ The architect/contractor memos and tile installation company invoicing show that the installation of this large roof deck patio occurred by May 26, 1981. BBI issued its CFC after inspection in July 1981, well after the roof deck patio work was performed. BBI's Superintendent issued a letter in August 1981 stating the building had been fully inspected and deemed safe.¹¹

In 1982, the project sponsor recorded with the City its condominium plat map (and CC&Rs) that noted the Pentroom has a roof deck patio associated with it. The plat map marked boundaries for the roof deck patio, because the roof deck patio was built “parapet to parapet.”

¹⁰ Code section 106.1.1 is not, though is asserted as, a basis for the underlying NOV. The Pentroom and its deck were often treated as one area in plans, particularly as the Pentroom was the only item on the roof level and it serves as an entry to the roof deck patio. The roof deck patio does not inherently have to be on a separate permit from the Pentroom. Rather the evidence shows that both the Pentroom renovation and the Pentroom patio were permitted under Permit No. 8004697. Likewise, because the roof deck patio passed final inspection with the Pentroom and the second means of egress for the roof level occupancy, they were all part of the 1981 CFC. There is no basis for a finding of a violation of Code section 106.4.7.

¹¹ Later approval of other tiling work at the roof level *supports* Ms. Wiget's position: “The records available support our professional assessment that the roof-tiling work (Tiled Platform) shown in Building Permit #8010873 was intended to *supplement* (not *supersede*) the broader scope of work approved in Building Permit #8004697 (and carried out by Cal Tile) for an “occupiable” roof.” (*see Ex. B, Avelar Report, Pg 10, Sec. G.*)

In 1997, the Department issued a permit to *retile the roof deck patio* adjacent to the exclusive use Pentroom, further evidencing the openness of the use of the roof as a deck patio and the Department's acceptance and approval of the roof deck patio.¹² The construction of the roof deck patio was open, above-board and without nefarious intent and its use was open and obvious for 40 years.

Finally, the Superior Court of California found that Ms. Wiget had a right to use of the roof and ordered the roof could and should be retiled when appropriate material became available.

Therefore, the evidence available demonstrates that the roof deck was approved prior to 1983, and remains available for use today.

C. The NOV Was Issued Pursuant to Complaints of One Neighbor Upset That He Did Not Purchase the Rights to Roof Deck Patio.

Complainant purchased his unit knowing of Ms. Wiget's existing use of the roof as a deck patio associated with her Pentroom, as written into the condominium plat map and as evidenced by the 2003 ruling that the HOA has the duty to retile the roof deck patio for the benefit of holder of rights to the roof deck patio. Despite his awareness of Ms. Wiget's right to use the patio, Complainant then immediately began a campaign of litigious harassment of Ms. Wiget.¹³

Complainant took over the presidency of the HOA to use HOA funds – instead of his own – to file litigation to eviscerate the 2003 ruling that the HOA must reinstall the tiling over Ms. Wiget's roof deck patio space. Complainant lost in Court. Complainant also sought to hinder the reinstallation of tile over the roof deck patio by engaging in a sham application for a permit to install tiles in hope of rejection by the Department. Complainant did not want the tiling project approved and worked to make sure the project would be considered a new roof deck patio, instead of an existing roof deck patio.

Complainant is acting in bad faith in complaining to the Department about Ms. Wiget's allowable use of her exclusive use property rights. He bought his unit knowing

¹² Ms. Wiget does not assert that Permit No. 8-09722100 (Ex. C, Vignoles Decl.'s Ex, Q) is the basis for a legal roof deck patio, but rather asserts that that permit evidences that the City recognized that a legal roof deck patio already existed at the property so that it could be legally *reconstructed*. Code Section 106.4.4. is not a basis for issuing the subject Order of Abatement or the underlying NOV.

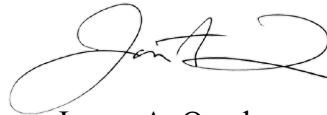
¹³ Complainant's harassment of Ms. Wiget is all the more appalling as Ms. Wiget is an elderly retired woman with severe physical limitations.

that the roof deck patio above his unit was legally permitted but continues with his meritless campaign to take away this valuable asset from Ms. Wiget.¹⁴

CONCLUSION

Ms. Wiget respectfully requests that this Board reverse the determination of the Director that BBI did not previously approve the construction of the roof deck patio in question and approved of its use and occupation. The basis for this reversal should be that the Department cannot rely on a "lack of permit in its records" as the basis for a notice of violation because the 1980-1981 construction and use pre-dates BBI's institution of effective electronic record keeping, and the Department does not assert special record keeping for renovations at the Property. Further support for such a reversal is that Ms. Wiget provides ample evidence that BBI approved the entire roof adjoining the Pentroom as a roof deck patio, under Permit No. 8004697, and the Superior Court confirmed Ms. Wiget's right to its use. BBI inspected and approved of the roof deck use and construction in question and the roof deck has never been abandoned.

Respectfully submitted,



James A. Quadra

Attachments: Exhibits A-H

cc: Interim Director Patrick O'Riordan
Chief Building Inspector Mauricio Hernandez: mauricio.hernandez@sfgov.org
Inspector Edward Greene: edward.greene@sfgov.org
John Gill, Attorney for HOA
Pamela Wiget

¹⁴ The roof deck rights could be worth well over \$2M, given the square foot price for prime view roof decks in San Francisco.