ABATEMENT APPEALS BOARD
Wednesday, June 20, 2012 at 9:00 a.m.
City Hall, 1 Dr. Carlton B. Goodlett Place, Room 416
ADOPTED September 19, 2012

MINUTES

A. CALL TO ORDER and ROLL CALL.

The meeting of the Abatement Appeals Board for Wednesday, June 20, 2012 was called to order at 9:00 a.m. by President Clinch. The roll call was taken by Commission Secretary Sonya Harris, and a quorum was certified.

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

Sonya Harris, Building Inspection Commission Secretary

D.B.I. REPRESENTATIVE PRESENT:
Edward Sweeney, Deputy Director of Inspection Services and Secretary to the Board
Rosemary Bosque, Chief Housing Inspector
Andrew Karcs, Senior Housing Inspector
John Hinchion, Acting Senior Building Inspector
Teresita Sulit, Secretary

Jana Clark, Deputy City Attorney

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

C. APPROVAL OF MINUTES: Discussion and possible action to adopt the minutes for the meetings held on April 18, 2012 and May 16, 2012.

President Clinch said they did not receive those minutes and Secretary Harris said they made a motion to continue.

D. CONTINUED APPEALS: Order(s) of Abatement

In the beginning of the proceeding, the Department presented its case first and had seven minutes, followed by the Appellant and then there were three minutes for rebuttal time for both sides, and lastly public comment.

1. CASE NO. 6758: 130 Beulah Street aka 130-132 Beulah Street

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

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

Andrew Karcs, Senior Housing Inspector, Housing Inspection Division, said this is Complaint #200857189 and the case was referred from the Building Inspection Division on May 8, 2008. The inspection of the premises was made on May 16, 2008 and the Notice of Violation was issued May 27, 2008. There was a final warning letter that was sent to the property owner on September 16, 2011 for non-compliance.

The first Director's Hearing was scheduled and heard on October 20, 2011. At that time after hearing testimony, the Hearing Officer issued a 30-day continuance and the second Director's Hearing was held on December 1, 2011. The Hearing Officer again took testimony from the occupants who had complained about the conditions of the illegal units, and after hearing the testimony, the Hearing Officer ascertained that there were no building permits taken out at that time and issued an Order of Abatement on the property.

The Order of Abatement was issued and posted on the building on February 22, 2012 and the complainant then filed an appeal on March 8, 2012. The property owner requested a moratorium on these type of units. Inspector Karcs presented aerial photographs to show the property in question on the Notice of Violation. He indicated the frontal view of the property and the path of travel towards the illegal units which was clearly marked A and B. The front was marked A, and B was towards the back.

The Notice of Inspection revealed hazardous conditions, a lack of smoke detectors, and basically what the property owner has created from a two-unit building to a four-unit apartment house. There is lack of smoke detectors, hazard warning and hazardous plumbing. Staff requested the members of the Board to concur with the Hearing Officer on the Director's Hearing and uphold the Order of Abatement.

Inspector Karcs said the units were occupied, and staff is receiving continued complaints from the occupants regarding the conditions of the units. His current notes indicated no permits have

been filed to correct the Notices of Violation to either remove or legalize the units. The nature of the complaint was the condition of the habitable spaces, the lack of smoke detectors, etc.

The legal use of that building was a two-unit building with a R3 rating. There was no second means of egress. When the owner converted this into a four-unit apartment building, there was no second means of egress and the only path of travel was through that side walkway and that is the only way in and out. Although Inspector Karcs had not been to this property, he stated while you can go forward or backwards in that alley, which was the only one means of egress and the other means of egress was at the rear of the unit.

There were no separate meters from PG&E for gas, illegal electrical, etc. for the two illegal units. There were only two units for two legal meters, electrical and gas. The allowable zoning for the two-unit building was R3 area and up to two units. In order to legalize these units, the tenants would have to move out in order to correct the electrical, wiring, plumbing, etc.

Commissioner Walker received complaints from four prior tenants, as of February, March and April of this year. People had been removed, and the units were re-rented as early as spring of this year. She seemed curious that it was not a continuous tenant and the units were re-rented while there were still violations.

Inspector Karcs said the property owner was cited for illegal creation of two units and Deputy Director Sweeney said they were cited for both the extra two units and the illegal construction.

Rosemary Bosque, Chief Housing Inspector, said the Department of Building Inspection cannot cite for violations of the Planning Code. They were dealing with the fact that it had now been four years since the Notice of Violation had been issued and they had received many complaints from occupants of this building. As to the question of zoning, the property owner had not yet filed a permit within four years to explore whether anything could be legalized as far as the 4-unit building but what they had was an apartment house without any kind of electrical, building and plumbing permits, and a significant amount of complaints from occupants of the building.

At that time Ms. Bosque was the Hearing Officer and they had very unhappy individuals who occupied a legal and illegal unit in this building, and the fact that this property owner was allowed to continuously re-rent these locations without the City doing anything about the legality of creating these units. She wanted to make sure the Board understands what was before her as a Hearing Officer and she considered it very serious. The property owner has not filed a permit in the last four years, and at the Hearing said that she did not intend to file a building permit.

Several months after the Hearing of December 1, 2011, the owner did not file a building permit and had there been an appropriate discussion to investigate the legalization of these units, not necessarily as dwelling units, but possibly forced occupancy. There has been no attempt and staff is concerned about the occupancy, without any building, electrical or plumbing permits to legalize the safety of the property.

Kathryn Roberts, Appellant, stated there were a lot of factual misrepresentations, and she understood the delicate position the City was in. There was some dry rot in the front unit that required partial removal of the wall, which she complied with permits and full inspections.

Ms. Roberts said the building was probably built sometime around 1904 and there were possibly more permits that were destroyed in the great fire of 1906. She had the wiring checked and it was totally safe. She had lived in the upstairs unit and she would not live there if it were unsafe. She had installed smoke detectors and carbon monoxide detectors. On the day of inspection of the property she did not realize the smoke detector was in the wrong place in the kitchen, but she has moved it and installed many more and believed that part was totally up to Code.

Ms. Roberts said there was a second means of egress for both units and Inspector Karcs admitted he had not been to the property. Regarding the two front and back units that were on the ground level with big windows people could jump out in case of an emergency, and that was not legal egress but they had more egress than she had on the third floor in her legal unit where she would be stuck if the building caught on fire because there was no way down except to jump.

Ms. Roberts said these units were not a safety issue and the people residing there now have not complained. There were two extremely vindictive tenants who had not lived in those units and were angry at her, because they were not allowed to have aquariums and for other unrelated reasons and these people had made her life miserable. When they were there, they had reported her to numerous City agencies, including SFPD. They reported her for being drunk and disorderly, accused her roommate of battery and lied about everything. They had retaliated against her for not concurring to their demands.

Ms. Roberts said it was important to her to provide safe, affordable, habitable housing in a great neighborhood that she has lived in for the last 35 years. She did not build these units and did not know they were illegal but she knew that was her responsibility. They were sold to her as unwarranted and not unpermitted. As far as she had known, they had been continuously occupied for possibly up to 100 years.

Ms. Roberts said it was not an emergency with the exception of a couple of people who had disputes with her and it ultimately became an issue the Board had to deal with. Those people not only moved but they instilled false rumors in the other tenants that the building was unsafe, mostly from complaints that they themselves called in.

Ms. Roberts said as a matter of fact, she re-rented the units within 24 hours because they were in such demand. She cannot afford not to rent these units and there were four of them in a maximum three-unit zone. Also, she cannot legalize them or afford to evict her tenants and she never stated to Inspector Bosque that she had no intention to submit a permit.

Ms. Roberts said she did not know what to do about this. The only two options that the City gave her were both completely unviable to her. She had filed for Chapter 13 bankruptcy last year and seriously cannot even afford to live in her building even with this rental income.

Ms. Roberts said this old 1904 building had constant maintenance issues. The whole rear deck

and stairway, a two-story structure on stilts which was also built without permit by the previous owner, had dry rot and termites, and she replaced the entire area and rebuilt it at a cost of $135,000. From November to February, she had to come up with $135,000, and it was done without permits because the house had apparently rotted which was potentially hazardous at any time. There could be a tremor and it may collapse and someone might get hurt. Ms. Roberts stated that for her to now employ an army of experts, planners, architects, evict her tenants, and lose rental income would be a problem as she was not wealthy and cannot afford to do this.

Ms. Roberts said if an Order of Abatement was issued on her building it would impact her even further because the bank would not fund this project and this would place her in a predicament. She went to the Board of Supervisors and Christina Olague is her district representative: They were working on a legislative remedy to this, given that there were upwards of 40,000 illegal units in the City right now, it seemed like the only rational approach would be a legislative remedy. She was not the worst case scenario in the City because she took great care and loves her building.

Commissioner Walker said this was originated in 2008 and the Board is limited as to what they can do with illegal units and the owner had an option to legalize them or get rid of them. She said the scenario with the tenants, as she sat on the Board for almost 10 years, she had never received so many complaint calls from the tenants and it especially bothered her when Ms. Roberts re-rented these units when there were active violations on them.

She felt the owner took advantage of this situation, and felt bad that Ms. Roberts was in this situation, but they were obligated to make sure the units were safe and livable that were built correctly and not an imminent danger. They are limited as to what they can do as an Abatement Appeals Board but she was very upset that she re-rented the units as early as spring of this year, and apparently had not done anything to fix the problem. The main issue here was about whether they were legal units and they were not. If Ms. Roberts cannot afford to keep the building in code compliant condition, she needed to look at that situation for herself.

Commissioner Mar said Ms. Roberts was not the original owner of this building, but even when it was purchased, as he sat in the seat as a landlord that he owned property in San Francisco as well. When they talked with other property owners that would set off an alarm because unwarranted units were considered illegal. Ms. Roberts' realtor should have explained to her the meaning of "unwarranted." She purchased a two-unit and not a four-unit building.

Ms. Roberts said this was her first property and she has never been through this before. Had she known about unwarranted buildings she would not be in this situation. She paid utilities for the entire building and PG&E charged four times as much because of the tier system as they perceived the building as only one person using that power when actually there were three units and the common areas, and she paid over $700 a month for this small building.

Ms. Roberts said she never understood why people were forced to destroy these types of units when nobody benefitted because it was not affordable for homeowners to stay in their homes and for tenants to find places to live. She placed an ad for the last apartment and had four dozen calls a week and believed there was an enormous demand for exactly this kind of housing in the city.

Ms. Roberts said she understood the Commission's concerns about safety and the inhabitability. She personally believed that the situation with her building was there had been a vendetta against her by a few individuals that had absolutely nothing to do with these issues. She believed that her building was probably one of the safest buildings in San Francisco and those concerns were overstated and they needed a legislative remedy to this.

Ms. Roberts said it was a huge problem and she was not alone. To single her out because of the complaints, the Board had not addressed this systemically, which was why she went to the Board of Supervisors. She took this matter further with the Mayor's Office and whatever was needed to expedite this because it needed to be addressed. The Commission was not blamed but the Board cannot address this issue as they act as a middle man and not under their jurisdiction, but to her it was a very serious issue.

Both units were unwarranted one-room units and the rent was under $2,000 a month and utilities were included for each unit. Ms. Roberts said she had received estimates of $250,000 to legalize them and it would have taken a lifetime to recover all her costs. Her contractor friend and her architects both gave an unofficial estimate of $250,000.

Vice President Melgar asked the Department what could be done with this situation. She had been sympathetic to the issue of prioritizing code enforcement and how it was done if it were solely based on complaints or if the landlord was a bad actor. She wanted to know more about what happened at this point in the process and believed there was a legitimate public policy issue here.

Commissioner Melgar said there were about 350,000 units in San Francisco and upwards of 50,000 units that were illegal. In her neighborhood almost everyone had an illegal unit. It was a political third rail in San Francisco and required further action. An Abatement Appeal might not resolve it but they needed, as a body, to explore what staff recommended.

Commissioner Melgar wanted to know more from Inspector Bosque in terms of type of permits that allowed Ms. Roberts how to correct some of these issues. She trusted Inspector Bosque and the guidance the Department can offer Ms. Roberts. The illegal units were not resolved during this appeal, but the Department had helped and guided her through the permitting process so that this illegal issue could be resolved.

Inspector Bosque said she had been with the City and County of San Francisco, Planning and the Department of Building Inspection, which dealt with this illegal unit issue for about 26 years. The problem in this case was the property owner had not yet filed a permit or submitted any plans; and from the pictures, it was clear that although she alleged that these units had been here since 1906, they had different types of construction much more recent than that.

Ms. Bosque said when she purchased the building, the seller would have given her a 3R Report that clearly indicated it was a two-unit building. There were no building permits filed or any plan submittal, and the discussion of whether Planning may approve this as a floor of occupancy had not continued because that process had not been initiated.
Ms. Bosque said it was unusual for cases that went through appeal and the owner had not

attempted to file a permit. If a permit with plans were filed, there would not be a Hearing because they would have allowed that process to go through so that could be analyzed. Ms. Roberts talked about the smoke detectors and from her description; she talked about battery smoke detectors.

Ms. Bosque said pursuant to the Housing Codes, a 4-unit R2 occupancy required a hard-wired smoke detector. When Ms. Roberts converted a two-family dwelling to a four-unit building, these types of things were not there. As Senior Inspector Karcs indicated, there were no building, electrical or plumbing permits for all the work that was done to create these units. Although Ms. Roberts believed she had been commended for getting a permit to deal with the dry rot, she needed to obtain a permit for further discussion and analysis before they can continue to advise her further. She recommended Ms. Roberts to submit a set of plans and a permit to update the record so this can be explored further.

Commissioner Walker said in the past, this was an issue that the Commission and several supervisors had dealt with. It was a third rail, and they had not started as far as a discussion about legalization because of some of the issues. In this case there was a history of tenant complaints and that was her concern.

Commissioner Walker said up to and included lost power, lost heating ability, and to withheld security deposits. Those were the things that she was less sensitive in those areas and less compassionate because she felt that they were illegal units, and the tenants had been taken advantage of and that was not what they were here to move forward. She appreciated that this had been a challenging situation but this happened since 2008, and there had been no progress and no excuse for it.

Ms. Roberts said the current tenants have not complained, and there was no loss of power. The last owner who lived in the illegal unit for 20 years had installed a very high wattage light bulb. She did not realize why the fuses were out, but she changed them about six years ago and never had a problem.

People complained when they left because they spilled something on the rug and they refused to compensate her for their damages. They had taken advantage of the situation and she attested that it was totally irrelevant to the condition of these units. Every month she makes less than the money spent on her building and had owned it for nine years and it was not profitable.

Any profit from these rental fees went back as improvements to the building, and it was a gorgeous property. She so proud to have owned and lived there and hoped this issue had not been troublesome. It bothered her and will do her best to get the permits and plans. It was not affordable at this time, but if there was an easier way, it will be done. She was a responsible landlord and apologized that people complained about her but it was not because the building was unsafe.

James Dyer said he was a happy tenant of the illegal unit and lived there for six years. In regards to the he said/she said, he was very sympathetic with his landlady because she told the truth. There were people who moved out and did serious damage to the floors. They went through

Small Claims Court and eventually ended up in a higher court, and Ms. Roberts won that and those people were very upset. This whole merit of taken the security deposit was to repair the floors that they damaged. He attested that he was aware of the situation and he had taken the photos of the damage.

The person who contacted Commissioner Walker had contacted practically every City Department. This former vindictive tenant had nothing better to do with his time. He contacted the Police and accused Mr. Dyer of beating him on the premises and this accusation was ridiculous as he was a lifelong, non-violent Quaker. He went through some criminal proceedings but everything was dismissed as it had not happened.

Ms. Roberts failed to mention that when the police officers arrived, they found her sober and coherent. This vindictive tenant was very troublesome and also had complained that Ms. Roberts took the money or she was bad for tenants. This was untrue as he had lived there for 6 years and this building was considered one of the nicest places in San Francisco.

The illegal units on the ground floor had been there for awhile. He believed there was nothing wrong with them and there was no danger since he resided there. He did not considered himself an expert, a contractor or an inspector, but when the landlord found something was wrong, she immediately fixed the problem and that should be taken into consideration.

Mr. Dyer resided in the upper 2-unit of the building. The alleged tenant who made the complaint no longer resided there and there were two of them. They worked together but one of them had a job, and the other stayed home and made dubious phone calls.

Deputy Director Sweeney said the fees were based on the fee amount of the permit itself. When the Plan Check staff ascertained that the cost of legalizing this unit, if the cost of construction was $50,000, $75,000 or $100,000, but it was incumbent upon Ms. Roberts to file a building permit with a set of plans, so that the plans could be examined and determined a fair price based on the permit value.

Mr. Sweeney said the plans were initially submitted through the Building Department, and subsequently routed to Planning, Fire, PUC, DPW and returned to Building. The Planning and the Building Departments had no control on the possibility of an R1 building in that neighborhood.

Inspector Bosque said if the Zoning Department disallowed the legalization of four units, perhaps it permitted the legalization of three, or established that as a floor of occupancy where she had individuals who were boarders. She believed the last individual was actually an occupant in her unit so maybe she had that as an opportunity in that lower floor issue which was to legalize that unit as a floor of occupancy.

Commissioner Walker said this had been ongoing since 2008 and she preferred that this went through the process of legalize what could have happened, but the Order of Abatement was appropriate, and tended to support the Order of Abatement and allow a period of time to complete that to either legalize them or get rid of them. She also wanted to deal with the tenants

that continue to be affected by this. If there was a Notice of Violation on these units, it should not be occupied and continuously rented. She made a motion to uphold the Order of Abatement and maybe a few months for the processing, whatever seemed reasonable to the Deputy Director for a period of time.

President Clinch said given the complexity of the process, perhaps something as much as six months and Commissioner Walker agreed and to uphold the Order of Abatement. Mr. Sweeney suggested 30 days to complete a permit application with plans for 60 days then she would have four years to think about it and perhaps six months for plan approval and 9 months to complete work. It was up to the Commission, but the time frame be shortened and the plans submitted with the permit.

Commissioner Lee said 30 or 60 days was insufficient time to obtain plans for this. He felt sorry Ms. Roberts was in this situation. Had Ms. Roberts known that their inspectors found two things currently wrong with her building? The construction was not permitted and it was never zoned to allow her to use four units in the building. A permit satisfied both items and the first item was legalized the four units, if she chose to legalize the four units passed Planning and that was what needed to be done because that was out of their jurisdiction.

The Department's decision will be upheld and allow Ms. Roberts up to 3 to 6 months for plan submittal to Building and then routed to Planning for review. If no plans were submitted within that time period an Abatement will be filed. In the mean time, the tenants in the lower units will have sufficient notice that it was necessary for them to vacate when the construction begins. Ms. Roberts said the tenants were content and wanted to stay since it was difficult for them to find anything.

Commissioner Walker moved to uphold the abatement and suggested 60 days to submit plans and did not agree with 6 months.

Attorney Clark read Building Code Section 105a.2.a.2 regarding Life-Safety Hazards. Ms. Clark said an Order could be modified but the Board should consider the immediate protection of the public in the event that they found any life-safety hazards before making a decision.

Commissioner Mar said they are back to 60 days for the Life-Safety which they heard from the Department the fire alarm had to be hard-wired and the egress was dealt with and some other things but those were two of his concerns.

Inspector Bosque clarified that because of the extended amount of code enforcement time needed for this particular case, the Department was currently at $2,157 and asked for the Board's direction on how they determined that into their Notice of Decision. She wanted her staff to understand that if Ms. Roberts was held responsible for that or if she filed a timely permit. Commissioner Walker said they used time and the fees would apply. If a permit were filed, the fees associated with the abatement procedure would be waived.

Inspector Bosque said Ms. Roberts had not yet been billed $2,157 because they wanted to hear from the Commission on this issue but at an hourly rate based on the code changes that this body

and the Board had approved. Their question depended on what the Notice of Decision said. If she filed the permit, will they waive or charge her the full amount? This case was so extraordinary because there were no permits filed and that was the problem.

Inspector Bosque said according to Chapter IA of the Building Code, the fees were due and payable when Ms. Roberts filed a permit. The question was the Board had the power to waive that in part or whatever and she wanted direction from them in their decision but she made it clear to them so that they can all move forward.

Commissioner McCarthy wanted a compromise on the fees to help Ms. Roberts. In reality, it had taken more than 90 days to get a proper set of drawings. As part of the compromise, he wanted the fee reduction so that this guided her in the filing process with the Department so they can move forward and given Ms. Roberts the chance to resolve this issue.

Commissioner Walker said there was no activity since 2008 and Ms. Roberts continuously rented these units. As much as it was a difficult situation, she suggested that Ms. Roberts would assure them by a permit filed in 60 days then it can be discounted. If not, it was due and payable and that was the problem. It was a he said/she said scenario, but there were numerous complaints on issues that were brought up. At this point, she wanted to resolve this. If there was an incentive that assured them that the permit had been filed and applied the reduction to $1500 and if not it returned to initial cost and the abatement will be applied.

President Clinch said he upheld the abatement, the Life-Safety issues repaired within 60 days and allotted Ms. Roberts from 3 to 6 months so that there would be discussion about obtaining a permit to resolve the illegal units with Planning and the assessment of cost. Commissioner Walker said she preferred three months instead of six months to obtain a permit application applied only to Planning to legalize them for permit submittal for three months with full legalization and nine months for the completion or six months, assumed 3 months in Planning. If Planning delayed it, they can revisit this, provide an extension and change the timeline, if there were one.

Vice President Melgar clarified the motion on the floor, if they upheld the Department's decision the property owner had 60 days to correct the Life-Safety decision and six months to get the permits into Planning. Commissioner Walker said three months for permit submittal to Planning. Vice President Melgar said it meant that Ms. Roberts had to obtain the actual plans and pay a contractor $6,000 for drawing up plans. She was unsure about three months but she deferred to other opinions. She asked Inspector Bosque what happened if the Department’s decision was not upheld?

Inspector Bosque said if the Board did not uphold then the Order cannot be issued and they would have known they had individuals occupied in illegal units with no building permit, and the staff and the Commission were liable if it happened. She recommended that, if the Board required the property owner to file the building permit within three months and responded to Planning Department’s inquiries within that period then it was more than a filed permit with plans and no response. If Ms. Roberts complied within the three months, the Board had the

incentive of reduced assessment of cost that accrued to that date by 325%, which helped recover some of the cost she needed for the plans.

Vice President Melgar alluded that when Ms. Roberts obtained a permit that was beyond her control, and when processed, she had diligently went through that process to legalize, remove or create a floor of occupancy, and she needed to respond to any request for additional plans or information from DBI, Plan Check, Fire and the Planning Department and that could be written into the decision as well. She was given the incentive to obtain that permit and processed within three months, because people had occupied those spaces.

Commissioner Mar concurred with the last recommendation on some of the clarification given by the staff. In reviewing this case, this was not that rare. Although it seemed contentious he said/she said scenario, he recalled that most cases before the Abatement Appeals Board usually came from a tenant or a neighbor.

Their main concern was if their inspector had inspected the building and reviewed the codes and it was their job for code enforcement which was basically similar to the law enforcement of police officers. They inspected and assessed the situation and if there are any violations. He believed that for that reason he was compelled to agree with the staff and upheld the law, the Order of Abatement, because the Board had jurisdiction. In every case he heard since he had been here were some neighbors usually besides a building tenant but the Board had no jurisdiction. They were not interested if people were friendly with their neighbors and that was none of their business.

Ms. Roberts said that if an Order of Abatement were placed on her building and with the Commission's added costly expenses that she was required to do, her loan would not be approved because it affected her credit, and she cannot get a home equity line. It created an enormous financial hardship for her.

Commissioner Walker said the Abatement will be held in abeyance if these things were done and it will be held and not filed. It will affect Ms. Roberts's title if she did not do what she was supposed to do. They upheld the Abatement with the requirement that Ms. Roberts fixed the Health-Safety issues in 60 days, and filed a permit for the Planning issues within three months, with possibly a year to resolve the situation. If there were unforeseen problems, they can agree to modify the time period if nothing else but it needed compliance and that was their point.

President Clinch said they moved very close to an agreement on the Commission, and the sticky point of six months was more than fair and some felt that three months was more appropriate. Commissioner McCarthy said they wanted to be fair about this. Six months and he understood the concerns of Commissioner Walker but it will take more than three months on the fire exiting issues. Commissioner Walker said Attorney Clark said it was only 60 days and that was the issue.

Commissioner McCarthy said Ms. Roberts can definitely file the permit, but he cannot see that being done in 60 days for the actual work and completion. There was a lot more to that than what was said especially the exiting issue towards the back. He wanted clarification that, if she

had 60 days to file the permit, she should not be held accountable if the work took five months to do.

Attorney Clark said on the code section with regard to Serious and Imminent Hazards to the Life, Health, or Safety, any Order of the Building Official shall be provided for the immediate protection any modification of the Order of the Building Official shall be provided for the immediate protection to the public and the work to correct each such hazard commenced 30 days and completed within 90 days.

With respect to violations which were not found by the Abatement Appeals Board constituted a Serious and Imminent Hazard, any decision modified the Order (and she paraphrased here), provided that the work repaired such violations commenced within 60 days and completed by 90 days within a reasonable time, not exceeding 18 months. It was the conditions that the Commission found that constituted a Serious and Imminent Hazard to Life, Health, and Safety of any person that had started within 30 days and completed within 90 days. It was conditions which were Life, Safety and Hazards but not found to be serious and imminent that you had to begin within 60 days and the work not exceeded 18 months.

Deputy Director Sweeney said the safest thing to say was they did not know what was on the other side of the wall or heard from any experts and Ms. Roberts did not bring contractors, engineers or architects. This was a four-year-old case and probably should have been done prior to coming here.

Commissioner Walker was willing to work on the timeline of doing this complete project, but the problem around egress was that if there was a fire and people died, it was on them. There are people dying, but it might not happen, but that was why they made specific mention of it in the code. As a tenant representative on this Commission, she personally believed the lack of egress was a serious issue and maybe the other stuff can be held and given more time, but that was problematic.

President Clinch said 30 days to commence work and 90 days to complete. Attorney Clark said that is correct with respect to Life-Safety and hazards found to be a serious and imminent hazard to life, safety and hazard to any person and/or structure or property and they are mainly concerned about the people.

President Clinch said without being the experts, they went off of staff's recommendation and it seemed like they had erred on the side of caution and that was his feeling as far as the Life-Safety and Hazards and agreed to the 3 and 4.5 months on the illegal unit issue.

Vice President Melgar clarified their decision that egress was an imminent hazard and Ms. Roberts had 30 days to fix it. Attorney Clark said from 30 to 90 days to completion.

Vice President Melgar said in order to process and file a permit, hire a contractor within 30 days, or not rent the vacant rental units to eliminate imminent risks. They decided that those tenants will be evicted or required completion in 30 days. They ordered this landlord not to rent this unit or occupy it and it weighed heavily on her to place somebody in a hazard.

Commissioner Walker sympathized with the tenants in the building but this tenant and possibly others recently resided there while the Notice of Violation was active. At some point, the Health and Safety issues needed to be dealt with. She had conflicts about getting rid of units but a bigger conflict with the potential for injury to people in non-compliance of codes. This was a difficult situation but it had been inactive 4 years ago since 2008.

Inspector Bosque said in addition to discussion about electrical, plumbing and things like that, if she hired a contractor to do some very minor investigation of what may be back there, they may have assured them that there was no imminent hazard, but they have not reached that point with this property owner. If she understood what needed to be done and hired a contractor, perhaps as far as imminent hazard can be addressed. The problem was Ms. Roberts was unable to do a lot of work under a separate permit if she did not legalize it. It was complicated but if the contractor knew what were the standard practices, etc., and provided them more information, they can determine whether these units would be in an interim basis occupied or not. She needed that done through a contractor because they were not allowed to inspect an open wall for inspection and through some permits, she could do that.

Commissioner Lee had a problem with that. He felt it was inappropriate if it was invisible that was not an imminent hazard and they required the tenant to open a wall to prove that it was an imminent hazard. If the imminent hazard were visible, she should be cited and enforced them to prove that the wiring on her walls were an imminent hazard.

Inspector Bosque said they talked about wiring placement without any kind of permit. Commissioner Walker said they did not know what the imminent hazard was and knew that egress was an imminent hazard. If the electrical wiring were a hazard that would, under the code, be included. If it were not, then it goes with the later permits, but it needed review.

Vice President Melgar said at this point that was not the process but they needed to see it and that was part of the problem. She needed to go through the process and deal with the issues and this was just the law. Although it might seem unfair, and emotionally she related and felt she was attacked by people that seemed a little off their rockers, but that was beside the point. There was a set of laws that everyone followed and she needed to deal with the process.

The Department tried to work with her and she needed to comply with what was asked. She wanted to hear from Inspector Bosque what exactly meant in terms of getting a contractor in there. If it meant that they voted on the motion currently on the floor, given her 60 days and the benefit of a doubt that it was not an imminent hazard, or if they went with an imminent, detailed what that meant in terms of the process in both ways?

Inspector Bosque said the language in 1a of the Building Code, talked about a serious or imminent hazard, it meant the degree of which they typically would issue an emergency order or something where they thought it was an imminent hazard. Since Ms. Roberts had no plans and information or the benefit of plan checking, if they had a set of floor plans, some information from a contractor, and inspected her smoke detectors and the egress, they might be considered and this Board had, in the past, fashioned some interim remedies in situations like this and she had done this in the past and she can do this now, but it required more information from this

property owner. She needed to file a set of plans, hire an electrical or plumbing contractor to inspect this and file a permit to show that at least those components are safe while she went through the process.

Vice President Melgar clarified that they are in the motion and followed the letter of the law and at the same time tried to be reasonable about what can be done. There was no evidence that there was an eminent hazard because the walls were not inspected, but there very well could be because they were done without permits. Inspector Bosque said the burden was on the property owner to file plans and hire a contractor for inspection.

Commissioner Lee felt that if the property owner went through the process and filed for a permit to legalize the work down there, the whole issue of the electrical in the walls will be resolved at that time. Inspector Bosque said there may not have been a discussion, as Vice President Melgar had previously indicated, if these were vacant units then she had all the time in the world but the problem was the units were occupied, and that was her concern.

Commissioner Walker said that was her concern also. She believed the motion should be identifiable Life-Safety issues and needed to have a permit issued within 30 days and completed within 60 days. They possibly had an inspector inspected prior to determine that but she had not believed they avoided that and a lack of egress could be an imminent hazard. President Clinch said the facts were not that the work was supposed to be done in 90 days, but they can evaluate at that time and to review it in 3 months. They wanted to see a good faith effort and to see something was done.

Attorney Clark clarified that the 30-90 days was for serious and imminent hazards and the whole section applied to Life-Safety Hazards. President Clinch said they made the motion an identifiable Life-Safety issue, a permit filed within 30 days and the work completed within 90 days, and reconvened this issue in 90 days and gave the Appellant 4.5 months to submit a permit to DBI for the illegal units. He asked if any Commissioners wanted to take the exception to the 4.5 months.

Commissioner Mar clarified it was a common practice of the Commission that when things were delayed at Planning, the owner requested an extension and if they reviewed it and communicated with you, then it worked through the process. If they were delayed, it was not the owners' fault.

Commissioner Lee said the 4.5 months was only for plan submittal. Vice President Melgar said they also should include the issue of the fees attached to her good faith efforts and the reduction of the fees. Commissioner Walker said also, there could be an end time that they could modify but wanted to have this done within a year and, if there was a delay in Planning, then they could.

President Clinch said it would take one year to be resolved, but evaluated as they had gone through the process and gave the Appellant one final say. Ms. Roberts said she has gone through extreme financial difficulties and if she complied – if they allowed her more time before she spent a lot of expenses on plans or anything like that. .

Commissioner McCarthy said they preferred 6 months and the compromise was for 4.5 months. Ms. Roberts said she wanted more than 30 days for the initial outlay. Commissioner Walker said if there were Life-Safety issues, they were legally bound. If not, she would have 4.5 months. Ms. Roberts said she believed there were not.

Commissioner McCarthy said if she filed the permits, made an appointment with an inspector and hired a contractor, Inspector Bosque will back up that there was no imminent danger so that will change this whole outlook. Ms. Roberts asked how much this permit will cost?

Commissioner McCarthy said Deputy Director Sweeney can help her with that and this was not a great cost to her and actually a very good compromise. They helped her with the cost through the Department in reducing $2,000 outstanding and they tied that in and 25 percent and they compromised on 50 percent that helped save money on cost. Commissioner Walker said she was reluctant to do that only because it had been four years since 2008. The Commissioners all agreed to 50 percent.

Attorney Clark wanted to clarify what the motion was. They had gone back and she was not entirely clear. The options had upheld the Order as it was modified or overturned and they wanted to modify the Order of Abatement.

Commissioner Walker made the motion, seconded by President Clinch, to modify the Order of Abatement to allow for imminent Health-Safety issues to be permitted by 30 days, executed by 90 days and the legalization of the units and other code violations of 4.5 months to file a permit within a year to complete it. They were willing to revisit the schedule if there were delays in Planning and if all of the deadlines were met by the Appellant, then they will reduce the fees by 50%. If not, the fees will return to their original and continue to accrue. The Order of Abatement will be held in abeyance for a year.

The motion carried unanimously

A duly noticed hearing before the Abatement Appeals Board (AAB) concerning the property located at **130 Beulah Street aka 130-132 Beulah Street** was held on June 20, 2012. The AAB heard oral testimony and reviewed the documentary evidence provided by the Department of Building Inspection, the Appellant and other interested persons.

After deliberation of the evidence submitted and the relief sought, the AAB made the following decisions: to modify the Order of Abatement ("OOA") (1) to allow Appellant 30 days to apply for permits to correct all code violations identified in the May 27, 2008 Notice of Violation ("NOV") that constitute a serious and imminent Life-Safety hazard and 90 days to complete all work regarding the same; (2) to allow Appellant 4.5 months to apply for permits to correct the remaining code violations identified in the NOV and one year to complete all work regarding the same; and (3) to reduce the assessment of costs by 50% if the deadlines set forth in (1) and (2) above are met. Appellant shall consult with the Department of Building Inspection for purposes of determining what code

violations identified in the NOV constitute a serious and imminent Life-Safety hazard. Finally, the Order of Abatement shall be held in abeyance for one year and recorded only in the event that the violations are not corrected in accordance with the Order of Abatement (OOA) within one year of the date of this Notice of Decision.

All time periods specified in this decision become effective on the date of the Notice of Decision (June 27, 2012). The Abatement Appeals Board may rehear an Appeal upon which a Decision has been rendered, provided a request for a rehearing has been made in writing 10 days of the date of the decision. Obtain a rehearing request form at 1660 Mission Street, 3rd Floor, San Francisco, CA 94103.

E. GENERAL PUBLIC COMMENTS

Secretary Harris called for General Public Comment on items that were not on the Abatement Appeal Board Agenda. There was no public comment.

ADJOURNMENT

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

The motion carried unanimously.

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

Respectfully submitted,

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Serena Fung, Secretary

_____
Edited by: Sonya Harris, BIC Secretary