



ABATEMENT APPEALS BOARD
Wednesday, September 21, 2011 at 9:00 a.m.
City Hall, 1 Dr. Carlton B. Goodlett Place, Room 416
ADOPTED February 15, 2012

MINUTES

A. CALL TO ORDER and ROLL CALL.

The meeting of the Abatement Appeals Board for September 21, 2011 was called to order at 9:00 a.m. by President Lee. Roll call was taken by Commission Secretary Sonya Harris, and a quorum was certified.

BOARD MEMBERS PRESENT:

Frank Lee, President
Debra Walker, Vice-President
Kevin Clinch, Commissioner
Reuben Hechanova, Commissioner
Warren Mar, Commissioner
Criss Romero, Commissioner
Mel Murphy, Commissioner

Sonya Harris, Building Inspection Commission Secretary

D.B.I. REPRESENTATIVE PRESENT:

Edward Sweeney, Deputy Director of Inspection Services
John Hinchion, Acting Senior Building Inspector
Rosemary Bosque, Chief Housing Inspector
Teresita Sulit, Secretary

Catharine Barnes, Deputy City Attorney

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

C. NEW APPEALS: Order(s) of Abatement

1. CASE NO. 6750: 619 Diamond Street

Owner of Record and Appellant: Lindsay Chambers for Ra Pacific LLC, 619 Diamond Street, San Francisco, CA 94114

ACTION REQUESTED BY APPELLANT: Reverse the Order of Abatement due to active building, plumbing and electrical permits on 619 Diamond Street that correct the building violations caused by the previous owner in 2008. The new owner purchased the home in late 2009, and it has been under continuous construction (with inspections conducted from 2010 to present). The communications from the Permit Section in the Building Department were that the active permits took care of the NOVs once completed.

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

Secretary Harris stated we will hear from the Department first for seven minutes and then the Appellant. Then we will have discussion, and then there is a three-minute rebuttal for each side.

President Lee stated thank you. I guess we will hear from the Department first.

John Hinchion, Acting Senior Building Inspector, Code Enforcement, stated the Appeal #6750, 619 Diamond Street, Complaint #200840567. In your package, you will see the dates for first and second notice of violations. The particular violation in this case is remove all walls and ceiling finishes of the entire building interior without a permit.

On March 24th of this year, a Director's Hearing took place and an Order of Abatement was issued with conditions including file for building permit for removal of interior finishes and submit corrected plans for work from beyond the scope of Permit Application #200804119483 and finally 90 days to complete all work and final inspection for approval.

There were two permits issued in 2008. One was to deal partially with a notice of violation, a separate case from the one we heard today. Shortly after that, there was a revision to that permit and all those permits expired. Earlier this year, those two permits were renewed, but they have not had those permits renewed, but they have not had final inspection yet.

A permit was filed in September of this year, a revision to the original permit. That permit is still in filing status and has not been issued, so take into consideration that no permits dealing with the violations were issued, inspected, and signed off before the Hearing and has not happened to date. Staff recommends to uphold the Order of Abatement and to impose assessment of costs, and that concludes our report.

President Lee asked any questions?

Commissioner Murphy stated I have just one question. These walls that were removed are they all interior? Inspector Hinchion stated yes, all interior walls.

Commissioner Murphy stated I understand the September permit application is for the extra work that was not included in the first two permits?

Inspector Hinchion stated it is for extra work of different types, but it does not refer to language in the violation which relates to removal of the interior wall finishes. Still, there is no specific reference to a particular violation.

President Lee stated so the violation, the permit application submitted for September, that is all for violations? Will that solve the violations?

Inspector Hinchion stated not completely, no.

President Lee stated so it is different? Inspector Hinchion stated yes.

Commissioner Murphy stated of these interior walls, were any of them structural and/or would have required to be upgraded to meet current structural requirements?

Inspector Hinchion stated whenever there is work done without a permit and any material is removed, until you get the permits and have inspections going on, it is only then that you truly get a clearer picture of exactly what went on.

Inspector Hinchion said often a permit can be gotten, and then after the first inspection, when the inspector corresponds between the violation and the description on the permit, they may discover that it does not entirely deal with all the issues, or they may discover all other issues that were not apparent when the initial notice of violation was issued, so that is what this whole process is about. We need a permit that deals specifically with it and then under the inspections with that permit and any other issues that can be dealt with.

President Lee stated thank you and asked if any of the Commissioners had questions? No, ok, we will have the Appellant, the homeowner. You have seven minutes.

Lindsay Chambers, Appellant, stated actually I am the homeowner of the property. I guess a question I have is that I have a permit here from 2009 that says clear NOV's with BID. It was a revision permit in 2008 permit that was pulled by the previous owner and that is what I have. This is a printout from online and this is the actual permit.

President Lee stated thank you. Yes, please continue.

The Appellant stated the main point of contention is that I do not have a permit that directly explicitly states that this permit is to clear the notice of violation, but that permit explicitly states that its intent is it is supposed to be able to be clear once it has been cleared, which we do not have a final because we have not completed construction, that the NOV's will be cleared once that permit is final.

Commissioner Murphy asked did the seller disclose this to you when they sold you the building?

The Appellant stated I was aware there were NOV's on the property. When I first checked with the Building Department, this my first time building in San Francisco, they said those NOV's cannot be cleared until the permit was final but this revision permit, when this particular one I have handed you, is final then the NOV's would be cleared.

Ed Sweeney, Deputy Director, stated that has not been final? I am aware that the prior owner is well known to the Building Department. He went through bankruptcy and left a number of these properties all in the same condition and a lot of notice of violations. It was a very complex case. The District Attorney has a case against the former owner. He must have had 20 of these properties throughout San Francisco, and this is just another one we had. You have investors now picking up the pieces to this property and they are getting permits and they are doing the right thing but they are still being whacked as for past deeds for someone that owned the property prior to them. That is probably the best way to put it.

Commissioner Murphy stated let me ask you a question, Mr. Sweeney. What does this woman need to do to resolve this?

Mr. Sweeney stated I believe she is pretty close to finalizing this. She probably needs a little more time. She would finally get the CFC and that would clear all the violations.

The Appellant stated my contractor said he should be done by November 1st.

Vice President Walker stated what is the current fees on this? Mr. Sweeney stated that John Hinchion would be better off on that.

The Appellant stated does anyone have any questions for me? Otherwise, I do not have any testimony. Thank you.

President Lee stated ok, do we have public comment? No, ok, rebuttal?

Inspector Hinchion stated in response to that question, the initial fee at this time as \$1,326.

Commissioner Murphy stated has Electrical signed off or Plumbing?

Inspector Hinchion stated I am not aware of that. The history here seems to be of not getting permits signed off and there was reference made to other permits issued. There can be permits issued, but the goal is to get the permits signed off. Because in doing so, we can verify that the permits of the violations, and then we can close the case.

Commissioner Murphy stated I just wonder why this ended up here in front of us.

Inspector Hinchion stated well, as the secretary mentioned, there was a change of ownership, and it is difficult when a new owner comes in because they are not familiar with exactly what went down, so they depend on their own research and any help we can give them. I do acknowledge that it is difficult.

Vice President Walker stated so the \$1,326 represents fees only, no penalties?

Inspector Hinchion stated that is the cost that we incurred in handling this case at this point.

President Lee stated anything else, Commissioners? Thank you. Homeowner, rebuttal?

The Appellant stated this is in response to whether there are active electrical and plumbing contracts on the property. My contractor asked the plumbing and electrician to pull their own permits, I apologize, I only have what I pulled off the online website, but there was the midpoint inspection this year for Plumbing and Electrical as well as the insertion of a fireplace but they have not been final because the house has not been completed and we have not had final inspection. Thank you.

Mr. Sweeney stated Commissioners, it would appear all the rough inspections have been done on the property and we are awaiting final.

President Lee stated ok, any more questions? Ok.

Vice President Walker stated so it is always troubling to me when, you know, in the midst of a house selling that had previous problems those issues have not been shared with the new purchaser and I think that is an ongoing problem. However, it does not deal with the fact of the violations here, which is what we are asked to look at. It looks to me like the Department's recommendation is an accurate one and that I would recommend or suggest or make a motion that we forward the staff approval that we adopted the recommendation of the staff but give some time to the owner to complete the work, maybe 30 to 60 days, two months to uphold the staff's recommendation and give the homeowner two months to complete the work.

Commissioner Murphy stated I would like to add to that. I would like the owner to at least get 90 days.

Vice President Walker stated ok, I am fine with that.

President Lee stated I think I will agree with 90 days. I think the homeowner said something about November.

Vice President Walker stated I am happy to amend my motion. Is there a second?

Commissioner Murphy stated seconded.

President Lee asked any other comments, Commissioners?

Commissioner Murphy stated I do. I think as a result of some of the condition of sale on some of this distressed property that we always will and most likely should at least be aware of what these properties have by virtue of their essentially a land mine for those that purchased it.

Commissioner Murphy said somehow, the realtors are just in there to sell the property without

the recognition that the impact on the buyer does have some repercussions. Do we have and should we take into account that these properties are and put the new owners at risk?

Mr. Sweeney stated in the case of how this particular former owner he had bankruptcy problems and had legal problems, he really did leave behind a mess. I have met with many people buying these properties, and all having the same problems as Ms. Chambers. It is very complex.

Mr. Sweeney said when you buy it from bankruptcy, you buy from a bank. The disclosures are not as much as you would have as on a regular sale. The buyer is at a lot more disadvantaged than your regular buyer. You need to be very sophisticated to buy property out of bankruptcy, especially one in bankruptcy that has been torn apart and has notices of violation.

President Lee stated you mentioned something interesting. Did you meet with the property owners or the new owners before they owned the property or after?

Mr. Sweeney stated unfortunately, I usually meet with them after. A couple of them I have met with prior to buying, and I tell them as soon as I hear this particular name "to watch yourself because you will probably discover all kinds of unpleasant things."

Commissioner Murphy stated when you take on one of these projects the properties are usually discounted, so you take that into effect. You also take into effect that you take the baggage when you sign on the dotted line. Whatever is on there, you are responsible for and I think the buyer in this case has shown very good faith in coming forward to getting permits and doing all she can to legalize it. We have given her time so that is where we are at.

President Lee stated ok, if there are no more comments, we will take a vote.

Commissioner Walker made a motion, seconded by Commissioner Hechanova to uphold the staff's decision with the amendment to give the owner an additional 90 days to complete the work.

The Commissioners voted as follows:

<i>President Lee</i>	<i>Yes</i>
<i>Vice President Walker</i>	<i>Yes</i>
<i>Commissioner Clinch</i>	<i>Yes</i>
<i>Commissioner Mar</i>	<i>Yes</i>
<i>Commissioner Murphy</i>	<i>Yes</i>
<i>Commissioner Romero</i>	<i>Yes</i>
<i>Commissioner Hechanova</i>	<i>Yes</i>

The motion carried unanimously.

President Lee stated thank you. Next case, please.

2. CASE NO. 6751: 250 Kearny Street

Owner of Record and Appellant: Henry Karnilowicz for Occidental Express, 1019 Howard Street, San Francisco, CA 94103

ACTION REQUESTED BY APPELLANT: The majority of permits have been issued to comply with the Order; however, the work cannot be completed within the six months' time frame, and therefore one year is requested. The building permit has not yet been signed off by Planning because there is a Planning Enforcement Notification regarding Complaint ID #10375. This enforcement notice is for the façade of the ground floor commercial space. Although the hotel is separate from the commercial space on the ground floor, the Planning Department will not release any permits until such as the enforcement case has been abated.

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

President Lee stated ok, the Department, please.

Inspector Hinchion stated Appeal #6751, 250 Kearny Street, Complaint #201063345. First and second notices of violations were issued. The violation in this case, unsafe building conditions include holes in fire rated walls and ceilings. As a result of the Director's Hearing March 10th of this year, an Order of Abatement was issued subject to conditions, file for building permit and 180 days to complete all work including final inspection approval.

There were numerous permits issued. The most recent permit this year has a large scope of work and that permit is only at the filings status, if the permit was issued and all the work completed and signed off, it would deal with the violation. Taken into consideration that that has not happened, staff recommends to uphold the Order of Abatement and impose assessment of costs.

Commissioner Murphy stated you said something there about the façade of the commercial being altered. What is that all about?

Inspector Hinchion stated is that a permit you are referring to?

Commissioner Murphy stated I am referring to work that has been done. Has the façade been altered?

Mr. Sweeney stated no, just for your information, this is a City Attorney case. It has been in our office for some time. I believe there is a change of ownership in recent months, and they seemed to be getting permits.

Vice President Walker stated so it is the permitting and the work subsequent to, I mean, what is being requested here is to add more time onto this, I believe, another six months in order to accomplish the work. My question is how come the work has not been done? Is that just the ownership issue?

Inspector Hinchion stated only the property owner can answer that question.

President Lee stated maybe we can just wait for that honor. Are there any other questions? Does the Department want to continue?

Rosemary Bosque, Chief Housing Inspector stated this is a City Attorney case. It is a residential hotel of 145 guest rooms, 137 are residential and 8 are tourists. This has a thirty-page notice of violation, one of the 1930's buildings we have ever seen. That notice of violation was issued last September, and the property owner hired a property manager, Sam Patel, and others to clean up this building, and they had since then undertaken a huge remodel of this building from top to bottom.

Inspector Bosque said it does not have that have many individuals in it and a substantial amount of progress has been made, including within the rooms that are occupied. They have even gone as far because there was a bed bug infestation to create a heat room in this building to be able to assist the occupants to treat their personal belongings as they then move them to newly rehabilitated rooms within the building. So a lot of work is ongoing within this property.

Vice President Walker stated could I ask a question about the request is for an extension of six months, and the staff's recommendation seems to be consistent. I mean, when I read this, it says okay to extend time to coincide with the expiration of the permit.

Inspector Bosque stated with respect to the fact that this is a case within the Code Enforcement Section, I would definitely defer to the wisdom of Inspector Hinchion on that, but it does seem to be keeping with the scale of the work that has been going on in the building. It is a very large scale that been taking up permits. It is my understanding that one of the issues when we did our joint inspection last September, which I was at that inspection as well, was that they had never completed the permit to do the seismic work that was done in the building, and that I understand is being resolved too. The scale is very large and six months I think would be reasonable, given that scale.

President Lee stated any question from the Department? None, the Appellant please.

Mr. Bob Noelke stated I am representing the Appellant here. Mr. Karnilowicz could not be here today, I am sorry about that. Permit application #2011-0701-9385 was issued yesterday. The fees were paid, \$17,000 in permit fees for \$680,000 for work to comply with two notices of violation.

Notice of Violations #200005134 and 201061908 and it deals with reconfiguring the buildings and reconfiguring the rooms and bringing the building essentially up to code. The thing is the permit is for a year, that permit is for 12-month period. We are asking beyond the six months period. We are asking for more time to coincide with the permit. Plumbing and Electrical permits are also on file, and there will be some other ones issued as well. If this could simply coincide with the permits or pretty close to it, I can understand that this building was a real problem. A number of permits, as you can see from your staff report, have been taken up, but

this latest one has been issued.

Commissioner Murphy stated how much time do you need to get the project finished?

Mr. Noelke, the Appellant's representative stated I think comfortably, a good 9 to 10 months and the life of the permit says 12. To get the sign-offs and so on, it does take time. There are a lot of issues here. Thank you so much.

Commissioner Murphy stated I have a question. How much or what percentage of work that had been completed to date and how much is left?

The Appellant's representative stated because I just became involved this morning, I do not have an answer for that. I think they have done a significant amount of work there so far based on Rosemary Bosque's testimony, but to what extent, I do not know. I can report to you and give you the information but I don't have it right now.

President Lee stated any other questions? Any public comments before we get rebuttals? Seeing none, can we have rebuttal from the Department.

Inspector Hinchion stated sometimes in these cases, a particular permit has got to deal specifically with the violation but it sounds like here the proposal is to do a major remodel of the building. When that work is done and signed off, that would automatically deal with the violation. Taking that into consideration, it is huge and multi-work proposed. We would have no issue with whatever timelines you decide today.

President Lee stated Appellant, do you have anything more to add?

The Appellant's representative stated we thank the Department.

Vice President Walker stated I would like to make a motion to uphold the Department's recommendation and extend the timeframe 180 more days to allow for the maximum time allowed under the permit, one year total.

Commissioner Murphy stated I will second that.

President Lee stated any discussion, Commissioners? I think it is appropriate. The Appellant seems to be moving along, and the Department seems to be agreeing with that assessment that the project is moving along, so I would agree.

Vice President Walker stated and one more thing, we have been at the Department in our Litigation Committee dealing with this project for a long time. I appreciate that the owner of the building is not only dealing with the violations but actually improving living conditions for people living in that building.

President Lee stated yes, that is another thing to consider. Working with actual occupancy is a difficult situation. We want to make sure everybody is still living or they are supposed to be,

that is always a timely element. Ok, call for vote, please.

Secretary Harris stated we have a roll call vote on the motion to uphold the Department's recommendation and to extend the timeframe for one year.

Vice President Walker stated to one year.

The Commissioners voted as follows:

<i>President Lee</i>	<i>Yes</i>
<i>Vice President Walker</i>	<i>Yes</i>
<i>Commissioner Clinch</i>	<i>Yes</i>
<i>Commissioner Mar</i>	<i>Yes</i>
<i>Commissioner Murphy</i>	<i>Yes</i>
<i>Commissioner Romero</i>	<i>Yes</i>
<i>Commissioner Hechanova</i>	<i>Yes</i>

The motion passed unanimously.

3. CASE NO. 6747: 1117 Geary Boulevard

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

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

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

President Lee stated ok, the Department first.

Inspector Hinchion stated Appeal #6747, 1117 Geary Boulevard, Complaint #201071348. The first and second notice of violation was issued. The violation in this case installed a deck 33 feet by 45 feet on the roof. A Director's Hearing took place on March 10th, an Order of Abatement issued with conditions to file for a building permit with plans to legalize or remove deck installed and that the final condition, 90 days to complete all work including final inspection approval.

There was a permit issued in 2008 for a commercial roof, that permit was signed off. So it is reasonable to conclude that there would have been no deck on that surface when that permit was signed off. Later this year, two permits were filed but have not been issued. Each of those permits, if any one of these were issued and inspector signed off, it would clear the violation. One was to legalize existing deck and a roof. The other was real installation of floating deck,

because they are not issued, staff recommends to uphold the Order of Abatement and impose assessment of costs.

Commissioner Murphy stated did this engineer's letter satisfy the Department to expand that light well on the deck?

Inspector Hinchion stated because there is no permit for the deck, the engineer's letter would be giving guidance to the owner on what type of permit to submit but the final outcome we are looking for is the relevant permit to be issued, inspected, and signed off.

Commissioner Murphy stated it is kind of hard to see in these aerial pictures. Was there a deck there originally?

Inspector Hinchion stated there may have been, and if there were, that would help them to get it replaced, but our issue is not whether there was or was not. Once the roofing permit was signed off, it is reasonable that there was no deck, there may be one previous, and maybe they put it back, thinking that was ok, but the material in the deck now is all new material, and that would require a permit.

President Lee stated what you are saying that when you closed out that roof permit, you visually inspected it, and there was no deck?

Inspector Hinchion stated the roofing permit generally does not require an inspection unless there is a placement of the plywood or framing at the roof.

President Lee stated ok, anything else, Commissioners?

Mr. Bob Noelke, representing the Appellant in this case, stated in response to Commissioner Murphy's question, there was a roof deck there. This deck that we are talking about today, what we call a floating deck and it is not really attached to the roof. It sits on top of the roof, and it is in a series of four by four panels that can be taken up for maintenance purposes when debris, etc., gets below a deck.

Mr. Noelke said it can be combustible, and it needs to be serviced and roof cleaned. It is kind of a floating deck, if you will. That is what is on the permit application that we filed to comply with a notice of violation but we were looking for permits that in the past that put this deck in. The problem is years ago, in your Property Conservation Division, which is the precursor of Code Enforcement when the Department was a bureau, issued a lengthy report in 1973, and that report included mentioned a drying platform, which is basically what this so-called deck is. It is really a drying platform. Deck is a misnomer in this case.

Mr. Noelke stated what happened was that it was part of an extensive property conservation division report and that was done with a permit and signed off in 1980. Well, the current owner of the building comes in shortly thereafter and does extensive rehab to the building and included what is not mentioned is the deck, this platform deck, which is really a floating deck.

Mr. Noelke said we come down to 2008 where a roofing permit was taken out. The owner acted in good faith, he took out a permit to replace the roof, and the deck had to be taken up. It was not secured in any permanent way. It is not really duckboards, but there is a ledger board along the perimeter and a little platform that sits on top of the existing roof. Then, we get into the fact that in 2008, the roofing permit was taken up and final.

Mr. Noelke stated in 2010, we have a complaint issued. The complaint was, apparently the residents of the building were having a party on this deck and they were creating a lot of trouble for the neighbors and a lot of noise. The neighbors were even concerned that they were climbing on the neighboring buildings because the buildings are right next to one another, they are very, very close.

Mr. Noelke said the Myrtle Street flats are actually the back of those buildings are in the same location as this property and they share a common property line. The complaint was made and a notice was issued, and that notice of violation cited only the fact that the building general section, that the building is unsafe and that a permit would be necessary for that deck.

Mr. Noelke stated to this end and that was done in October 10th of last year. Well, within less than 60 days in December, we have a Directors' Hearing. The owner was in touch with staff but never got a clear answer, so we had a Director's Hearing, which was then continued until January 13th of 2011 and we have a tape of that Director's Hearing; and on that tape, Neil Friedman was the Director's representative, and he indicated that the case should be returned to staff and that the Order of Abatement not be issued and it should be returned to staff.

Mr. Noelke said for some reason, the case went back to staff and the Order was issued. So what we are here about today is to say, first of all, that the notice of violation had defects. Secondly, the Order should not have been issued under the January 13th hearing. To that end also, we have filed a building permit application to comply with that notice of violation and a structural engineer's report has been prepared by the owner.

Mr. Noelke stated we filed that permit application and is currently on hold because the building is a landmark. It is a beautiful building and was built in the 1870's, I think, and it has a man-sharp roof and so on. It is right across from the old Jack Tower Hotel.

Mr. Noelke said we filed the permit and now the permit is we have to go before the Historic Commission because the building is a landmark; and if you have a notice of violation, you have to go before the full Historic Commission that is a hard and fast rule so we are in a catch-22 where we are in a difficult situation here. So what we wanted to do is to see if this Order could be reversed and we have the tape here if you want to hear it and so on and I am available for any questions.

Commissioner Murphy stated just one, actually, two questions. If you look at the picture right there, when you look through the skylight, what is below that skylight? Mr. Noelke stated a store front and this is on the second level.

Commissioner Murphy stated that is light for the store? Mr. Noelke stated the first level is 100% lot coverage, and then on the second level, the building is dense in the rear.

Commissioner Murphy stated my second question is do you have a picture of the deck? Mr. Noelke stated I have a picture here and I should have brought a better picture, but this was all I could bring. Can I bring this up to you?

Commissioner Murphy stated this deck that is on here right now was replaced by that one?

Mr. Noelke stated this is the current deck. Just to let you know, we also used the old boards that were there before the roof was done on 2008. We used the old board, simply turned them and fasten and put them back down. The deck is in 4x8 panels that you can pull up. It is what we call a floating deck.

Vice President Walker stated so we have seen some deck issues before us. If there is a non-conforming deck that is in existence, we have a grandfather, I mean, assuming it has not been built before a certain date, but when somebody rebuilt or uses new materials to rebuild it because it is deteriorating or whatever, if the non-conforming part does triggered a requirement of a Planning review if it takes up too much land use. So can you talk to me about what the requirements are when decks are non-conforming?

Mr. Sweeney stated on a situation like this, typically what we ask, after the notice of violation, we ask for proof that a deck was there. I have had conversations with the owner and some of the owner's consultants and I have asked them to give me proof that the deck was there and it is very sketchy.

Mr. Sweeney said these conservation reports, as we have heard in this Commission many a times, the 1960's and 1970's were sometimes they would give way and sometimes they were a little more restrictive. They are not always accurate. They do not always tell you if, in the 1960's and 1970's, it is important to realized that in San Francisco that we were having problems with the inner cities and there were funds coming in from Washington State and States to had rehab on a lot of these buildings, a lot of code violations were glossed over.

Mr. Sweeney stated now there is gentrification, and standards are higher and Code cycles have changed. Typically on a permit like this, when you are going to get a roof permit and you have a deck, you call out a deck because it is a structural permit or whether you call it a floating deck or a deck, it is a deck.

Mr. Sweeney said the code is quite clear. There is a number of things that you have to do if you are going to do a rebuilt. It is 100% rebuilt, so therefore it has to comply with the 2011 San Francisco Building Code, so that is what we were asking, notification, everything.

Commissioner Murphy stated notification and everything?

Mr. Sweeney stated the way we are looking at this, it is a brand-new deck. Many times I met with the consultants and owners that is what I told them to get a set of plans, come in, submit

plans and go through the motions and there is nothing I can do for them. There is no relief that I could possibly give on a brand new deck and finally they have come in with a deck, sounds like they might need a little more time.

Vice President Walker stated I would like to clear up this comment that the Director's Hearing indicated that it was not going to be an abatement that was not going to be issued, that it would go back to staff.

Commissioner Murphy stated do you want to go to the tape?

Vice President Walker stated I would not mind hearing the tape with you. So I just want the Department to talk about that one and I want to hear it.

Mr. Noelke stated Mr. Wofsy wanted to say something and I know our time is limited.

Vice President Walker stated I have been asking questions to staff, so go ahead.

President Lee stated use the microphone, please.

Mr. Alan Wofsy, President of Emeric-Goodman and Associates, stated I was personally at the hearing. My small firm was selected in 1978 to renovate this building by the San Francisco Redevelopment Agency. At that time, it was a City Landmark. It was also in the National Register of Historic Places. The reports that Mr. Sweeney was talking about as being sketchy were far from the case with this building because this building was in a fishbowl.

Mr. Wofsy said there were numerous steps we had to go through to satisfy both the City Landmarks and the State Historic Commission and the National Park Service. In any case, I was at two hearings on this matter, two Director's Hearings. First was in December, Mr. Sweeney was the Director and I was at the second hearing of January 13th when Mr. Friedman was the Hearing Examiner.

Mr. Wofsy stated unfortunately, they destroyed the tape of the December Hearing so I could not get a copy of that. That was important because we had testimony from our roofer. The January 13th tape I do have with me, and I am going to play that but I just want to give one slight additional prologue.

Mr. Wofsy said there were a number of hearings that Mr. Friedman officiated over and when he went to do an Order of Advisement and I have some of those, he was very explicit to give some 120 days, 30 days. Very explicit, so it is not an ambiguous situation and hopefully I will press the right buttons. Should I play it here or move it up closer?

Vice President Walker stated play it into the microphone. They will be able to hear it.

Mr. Wofsy said the tape of January 13th was unintelligible.

Commissioner Walker said to review the current information. It has to come back here, it will come back here but for now we will return it to staff. Thank you.

Mr. Wofsy asked what he should be doing? Be in touch.

Mr. Wofsy stated there is not a specific reference to the deck but it is for the Redevelopment Agency. You can see that there has always been a deck. The deck was renovated and every once in awhile, there is roofing work done and it's not an effective event. I could see if there were a complaint saying that someone just put a deck on there, but out of the blue, they said it was illegal.

That was a complaint on work without a permit and filed anonymously.

Well, there is no point in hearing any more of this right now, so we are returning it to staff and if there is further complication or for some reason it turns out the case is valid, it will come back here.

Vice President Walker stated so I have a question. It seems to me that there was not a determination at that Director's Hearing on this case, so this may be a premature move, my sense.

Mr. Sweeney stated Oh, I presided over the first Director's Hearing, and I put it off to give the owner time to prove that there ever was a permit there.

Commissioner Murphy stated you give them 30 days at that time?

Vice President Walker stated did you make a determination?

Mr. Sweeney stated I put the hearing off, I don't recall. Give them 30-day continuance to get a set of plans.

Vice President Walker stated so they came back and got another continuance?

Mr. Noelke stated no, we got a continuance in December and came back on January 13th, and that is when Mr. Friedman said at the subsequent hearing.

Vice President Walker stated right.

Commissioner Murphy asked did you have the set of plans when you came back the second time?

Mr. Wofsy stated at the first hearing, Mr. Sweeney said prove to me that there used to be a deck there. This is something from 35 years ago. I don't see the deck on any of the plans. So I had to go back into cold storage to find files from 25 and 35 years ago and had a copy of this extensive report we did which show:

A.The way the deck looked in the 1970s, which is pretty deteriorated.

B.The compliance letter from the San Francisco Redevelopment Agency, specifically saying that the decking platform on roof is damaged, repair it in an approved manner and install railing around decking and the certificate of completion from the Redevelopment Agency. Furthermore, there is part of this extensive report, done by a well known architecture firm at that time, Mark and Associates that was financed by the National Endowment for the Arts to renovate the building.

Mr. Noelke stated if I could just mention one thing? The permit sought was done by the Bureau of Building Inspection that was their report.

Mr. Wofsy stated as you see in the first part, which is the attachment to no. 3, the feasibility study that was done by Marks and Associates, they referenced the decks four or five times the existing deck. On the last page you will see that they have grey out with the deck area, that time the deck covered the whole second floor roof where it says H.

President Lee stated that was all presented at the second hearing?

Mr. Wofsy stated yes, basically, the first part of this package that I call attachment item was all presented to Mr. Friedman and he then sent it back to staff. I spoke to Mr. Berrios immediately after the Hearing and he said he admitted that, alright, you proved there is a deck but how do we know it is safe. We cannot permit a deck where people might fall in where it might not be safe. Get a structural report. I got a structural report on March 4th I sent it to them and on March 22nd they put a notice of abatement.

Commissioner Murphy stated getting back to what Mr. Friedman was saying, if you take down a deck that has been up there for 100 years it doesn't matter, if you take that deck down in order to replace it or out of an extension you have to get plans and permits, same with the stairs and that is why people keep 50% of stairs, so they do not have to get plans.

Mr. Noelke stated and we concur with that and that is why we have a permit out right now to comply.

Commissioner Murphy asked another question I have is more on the category of the structural capacity in that this could be construed as a deck could also be an assembly area. In that is there a limitation on the number of people that can go on that deck?

Mr. Noelke stated to my knowledge, there is not. We put a limitation on it.

Commissioner Murphy stated overloaded. Because hearing that when a party does occur out there, it release stresses beyond the calculations in here, clearly.

Mr. Noelke stated that would be addressed in the building permit. Yes, absolutely.

Commissioner Murphy stated occupancy and limitation of the number of people going out on

that deck there is very crucial.

Mr. Noelke stated yes.

Commissioner Murphy stated hearings from the other engineer on the Commission here?

Mr. Wofsy stated I agreed and I think the permit would address structural concerns and be taken care of usually by assigned engineers.

Mr. Noelke stated thank you. Yes, we have that structural report and that building permit.

Vice President Walker stated can I ask that question to our City Attorney? I believe that this deck, as it is now requires a permit that was not gotten in the beginning. I got that it is fully complied. In which case, I would normally say let's give them time and uphold the notice of violation but it seems to me that the Director's Hearing did not have a determination, so there is really nothing to appeal at this point.

Attorney Barnes stated if you find that as a matter of fact there was never an Order of Abatement issued by the Director, then you would not have jurisdiction that would be your factual determination based on the evidence you have heard today.

Vice President Walker stated ok.

President Lee stated so, Order of Abatement was never...

Attorney Barnes stated if you concluded from the tape that there was never actually an Order of Abatement and was referred back to the staff, an Order of Abatement never issued, you would not have jurisdiction, then there was never one.

Commissioner Murphy stated if you want us to listen to the tape, we will do it.

President Lee stated do we send it back to the Department?

Vice President Walker stated maybe we should hear public first before we comment.

President Lee stated let's have public comment. Is there any public comment?

Secretary Harris stated actually I explained that they gave you a little more time. It covers both of you. Three minutes for rebuttal.

Commissioner Murphy stated Sonya, do they have any more time or not? Secretary Harris stated I do not believe so.

President Lee stated we went through that already.

Vice President Walker stated that is ok. It seems to me like there is a need for this permit and the notice of violation that was issued and that processed. I believe that the Order of Abatement was not issued clearly enough at the last Hearing unless there is something subsequent to that tape that the staff has, so I would say that we do not have jurisdiction on this that we return it to the staff; and, if they wanted to have a Director's Hearing, going through that process to do it and bring it back to us.

Secretary Harris stated just one moment. We have a brief...

President Lee stated are we all set? Let's go with Commissioner Clinch then we will go with the rebuttals.

Commissioner Clinch stated so there is a discrepancy between what was said on the tape and what was said here that there was an Order of Abatement issued, and it was just a clerical thing at the conclusion at that meeting somebody took the notes that we would issue the Order of Abatement?

Mr. Noelke stated it is clear from the tape that it was returned to staff. Why in order subsequent to this issue that would have been a misunderstanding. These things happen all the time.

Commissioner Clinch stated so you did not receive an Order of Abatement?

Mr. Noelke stated we did receive an Order of Abatement, and a bill for \$1,500 assessment of cost.

President Lee stated anything else? Is there any public comment? No public comment?

My name is Samuel Rankin and I lived in the building for about 25 years. I just wanted to say that I think the deck was always there. The tenants enjoyed using the deck. Thank you.

President Lee asked any other public comment? Seeing none, ok. Department, you have three minutes for rebuttal.

Inspector Hinchion stated for the Director's Hearings, there are two key words. As was mentioned earlier at the first Hearing on December 9th, the case was continued. The key word is continuance so it comes back at least 30 days later. At the Hearing on January 13th of this year, the key word is advisement, that word was used at the Hearing; it was not really up to date, we had a parachute tape at the very end when there was a discussion in that case, I at it myself I witnessed it.

There was discussion went down back and forth for 3 minutes were exceeded on all sides. The meeting got fairly unpredictable and so the portion we heard at the end was the hearing officer saying it has been returned to staff. We iterating that he already said that 30-day advisement and talked back to the staff.

During the 30 days, there was a further opportunity to ask for continuance. They assured us that they were going to get permits to deal with the violation and that did not happen during 30 days and at the end of 30 days, the Department was obligated to issue an Order of Abatement and even it took a little time to process it.

Now here we are today that we have a deck that is occupied and there are no guardrails and if an accident happens, the Department is going to be asked how can we allowed this condition to continue. I would say that, if there is confusion, maybe we can consider requesting a transcript of the Hearing at that particular address that was held on January 13th and a written transcript that all of you Board members can review thoroughly, staff can review it thoroughly.

If I am somehow misspeaking, I will be glad to admit that at a later date but in absence of that, I would beg you please do not leave the Department in a vulnerable position where an accident may happen.

Vice President Walker stated I appreciate that. We only heard a key portion of what was presented. I hear what you are saying and I would feel more comfortable either getting a copy of the tape and being able to listen to it, to make sure that we have jurisdiction to do anything or get a transcript. I think that you are right and I hear what you are saying.

President Lee stated when it comes to abatement?

Commissioner Murphy stated they are saying get the transcript and give them another 30 days and another 30 day exception.

Vice President Walker stated well, I feel like the Order was issued, so I get that part. I am sort of confused as to whether we are supposed to follow the words of the hearing officer. I guess, we usually start our action once the Order is issued and an appeal is filed so that part was done correctly. We have not had a situation where there is a contradiction between what might have been said at the Hearing and the Order itself. I guess, that is where I.

President Lee stated the Board should reserve that discussion until after until we hear from the Appellant.

Mr. Noelke stated I would like to respond to Mr. Hinchion's comments. First of all, there is a guard rail, a significant guard rail. Secondly, the transcript and I have handled Director's hearings for years at the Department, an advisement is so that the case does not come back for another hearing but when you returned it to staff, generally but I have no problem with getting a transcript and looking at the whole tape to get the thing. I do not think we have a problem whatsoever with that so if we have to continue for 30 days or something like this.

Mr. Wofsy stated once again, I would like to do the final rebuttal. What Mr. Hinchion said is completely false. Never once was the word advisement used in our case. There were a number of cases that was very specific and in ours he never once used the word advisement and that is basically a due processing. I addressed that very clearly in the attachment to Item #3, Item B1 and B2. I object to what I considered an important lack of due process.

We submitted this extensive package to staff on September 15th. We never saw the staff report until when this Hearing started. In the staff report, they raised issues, none of which were raised before either in the notice of violation or in the Order of Abatement. They have extensive claims about why this deck is too large, never was that said before. They have claims how the Building Historical Code does not apply, that was never said before. There is a huge due process thing here. We did not have any opportunity to respond to the false charges that they have about which is the applicable code for this deck.

The original deck covered about 4,000 to 5,000 square feet on the second floor. When we renovated the building, it was reduced to about 1,400 or 1,500 square feet. Based on the staff report now, which we just saw for the first time, they said it could only be 500 square feet that would mean that, any time you reroofed a historic building you lose your roof deck, that could not be the intent of the Historic Building Code undo the historic features of this building. There has been a roof deck for probably about 100 years and it is the only open space for the tenants in the building and there has always been a roof deck. The implication here is that it is a brand new roof and it is not a brand new deck. The contractor who worked with the roofers is here and he can testify they simply replaced the deck that was there and replaced the back boards.

President Lee stated thank you very much. Commissioners?

Vice President Walker stated on the face of this, I would actually suggest that we uphold the staff's recommendation and give the Appellant some time to complete the work, that is what I would do, but I do have issues about procedure here. I want to have a discussion here with other Commissioners who are talking about.

Commissioner Mar stated I actually wanted to get it a little clearer what the Appellant wants in terms to resolve is. It seems like the issue is not just time because they have to redo the deck into a different and smaller configuration then it is not just time, so what is the resolution?

Vice President Walker stated it is a Planning issue.

Mr. Wofsy stated you are right, Commissioner. We just saw this for the first time 15 minutes ago that they are saying the deck can only be 500 square feet. We, in good faith, got a structural report as soon as and that is what a deck normally is it is only a building with 30 people and normally there are 2 people in the deck. Where there was one freak incident a year ago or a year and half ago where somebody had a party which is not approved. We do not allow assembly roof on our deck and we have house rules about that and we notified all the tenants as soon as I heard about that. It was only done anonymously through the Building Department and it should have been done through the Police Department if it was disturbing the peace; but you are right, this issue about the size of the deck is an incredibly important issue. The deck is a lot smaller than ever before, but it has been this size for 35 years and this is a historic building and we should be entitled to keep historic features, which is outside deck and not a mini deck. We would want to be able to make the case that the State Historic Building Code allows you to retain the features that were there originally in the same size.

Raising obviously safety issues, I consider these to be scare tactics. We had a well known structural engineer already determined that as walking deck for people to stand on is perfectly safe and we have a well-known architectural firm. What we would like to do is try to work out something.

Mr. Noelke stated perhaps the best course is to take a 30-day continuance. Look into this matter on the Order of Abatement, in the first place, and get that ironed out with the Department. I suggest that because there is an issue here which Vice President Walker brought up about the Order itself.

President Lee stated let me make a comment and maybe that will facilitate some sort of a solution. If I were Solomon and I was to see this case, I would say close the deck, do not allow anybody on that roof, reverse the Abatement of Order and let the Appellant go through the Planning process. So this way, nobody uses the deck while it is going through Planning until it is resolved. I think maybe that would be the best solution. Is there any way we can accomplish that?

Mr. Sweeney stated it would be better to check to see if the deck is part of the exiting system. I would like to figure out if the deck is part of an exiting system.

Commissioner Murphy stated Inspector Hinchion mentioned there were no guard rails on there? Are the guard rails not high enough? Can you explain that?

Inspector Hinchion stated we are back to the same problem as all here we do not initial permit for the deck, therefore, we cannot categorically say what condition it is in and so we have to assumed it is unsafe.

Vice President Walker stated is this a whirlpool on top? Is that a pool?

Mr. Wofsy stated no, what that is the storefront is on the ground floor and skylight. The wood around there is just to protect the skylight.

President Lee stated how about this? Can we maybe take a 30-day continuance on this matter and have staff go out and look to see if the deck is a required exit or what and then come back to the abatement report. Commissioners?

Vice President Walker stated what was this?

President Lee stated maybe we can just have a 30-day continuance and let staff go out and see if the deck is a required exit.

Commissioner Murphy stated and also to review the tape.

President Lee stated yes, and a chance to review the tape.

Vice President Walker stated I am ok with that, but the issue here, we did have an Order of Abatement that went out. The question is and the staff seems to indicate that was the staff's

contention is to issue an Order of Abatement. There are some issues about it but when you replaced a deck that requires a permit. The issue at hand here is really to be clear, I think, about procedure and in order to clarify whether we have jurisdiction to do anything.

I would support a continuance. I am at this point leaning towards upholding the staff's recommendation, but do want to have a little bit more information. The issue around decks is challenging for a lot of people we hear it all the time. If the deck that is in consistency, but not complying is falling apart, we want it to be safe, but in order for the deck to be rebuilt it ends up having to go through the Planning process because it is non-conforming, it is a challenge but it is not our job to make those rules.

Commissioner Murphy stated President Lee, did I hear a motion from you?

President Lee stated the first one, I wanted to hear what the Commissioners, my colleagues thought about.

Commissioner Murphy stated I added to your motion.

Secretary Harris stated what is the motion?

President Lee stated to just to see if we could just close for a 30-day continuance. After that, we talked about taking a 30-day continuance on this matter so to allow the staff to go out to review the deck to see if it is a required exit or not and at the same time, maybe get a transcript of the Hearing for us.

Vice President Walker stated well, if it is an exit, you cannot close it?

Commissioner asked do you only have these tapes? Are there transcripts in existence?

Mr. Noelke stated we only have the tapes. We do not have the transcript, sorry.

President Lee stated so the Department has a tape and a transcript.

Secretary Harris stated the Department has a tape but I am not sure if they keep a transcript. We can make a copy of the tape.

President Lee stated a continuance of 30 days?

Secretary Harris stated there is a motion on the floor for a 30-day continuance for the inspection of the property and also to get a transcript of the tape of the previous Hearing.

Vice President Walker stated during which time, the roof deck will not be used.

Commissioner Murphy stated is there something about exiting, also? It will be taken care of by the inspection.

The Commissioners voted as follows:

<i>President Lee</i>	<i>Yes</i>
<i>Vice President Walker</i>	<i>Yes</i>
<i>Commissioner Clinch</i>	<i>Yes</i>
<i>Commissioner Mar</i>	<i>Yes</i>
<i>Commissioner Murphy</i>	<i>Yes</i>
<i>Commissioner Romero</i>	<i>Yes</i>
<i>Commissioner Hechanova</i>	<i>Yes</i>

The motion carried unanimously.

D. PUBLIC COMMENT

Secretary Harris asked if there was any general public comment on items not on the agenda. There was no public comment.

E. ADJOURNMENT

Vice President Walker made a motion, seconded by Commissioner Murphy that the meeting be adjourned. The motion carried unanimously.

The meeting was adjourned at 9:49 a.m.

Respectfully submitted,

Serena Fung, Secretary

Edited by: Sonya Harris, BIC Secretary