



ABATEMENT APPEALS BOARD
Wednesday, April 20, 2011 at 9:00 a.m.
City Hall, 1 Dr. Carlton B. Goodlett Place, Room 416
ADOPTED January 18, 2012

MINUTES

A. CALL TO ORDER and ROLL CALL.

The meeting of the Abatement Appeals Board for April 20, 2011 was called to order at 9:07 a.m. by President Lee. Roll call was taken by Secretary Ann Aherne, and a quorum was certified.

BOARD MEMBERS PRESENT:

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

Ann Aherne, Building Inspection Commission Secretary

D.B.I. REPRESENTATIVES PRESENT:

Edward Sweeney, Deputy Director of Inspection Services
Alan Davison, Sr. Housing Inspector
Steve Panelli, Chief Plumbing Inspector

Francesca Gessner, Deputy City Attorney

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

C. APPROVAL OF MINUTES: Meeting held on May 19, 2010, June 16, 2010, and July 21, 2010.

Commissioner Hechanova made a motion, seconded by Commissioner Walker that the May 19, 2010 minutes be approved. The motion carried unanimously.

Commissioner Hechanova made a motion, seconded by Commissioner Walker that the June 16, 2010 minutes be approved. The motion carried unanimously.

Commissioner Hechanova made a motion, seconded by President Lee that the July 21, 2010 minutes be approved. The motion carried unanimously.

D. NEW CASE: ORDER OF ABATEMENT

1. CASE NO. 6745: 557 Howard Street

Owner of Record and Appellant: Robert S. Guggenheim,
c/o A-1 Property Management, P. O. Box 822, Pacifica, CA 94044

Agent for the Owner: Robert Noelke, c/o A-1 Property Management,
P. O. Box 822, Pacifica, CA 94044

ACTION REQUESTED BY APPELLANT: The Appellant has requested more time to comply with the Notice of Violation, and wants a reduction of the 9X Investigation Fee imposed for work without proper permit.

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

Senior Housing Inspector Alan Davison stated that this case is an illegal use of the occupancy with a store at the ground floor. Mr. Davison said that it has a ground floor fronting Howard and the second floor has been illegally converted into residence of two dwelling units established without proper permit. Mr. Davison stated that this stems from the City Attorney Task Force inspection which was initiated following the referral of the San Francisco Police Department. Mr. Davison continued to report on the following items:

- A dwelling on the Howard Street side consisting of two bedrooms and one kitchen, and one kitchen in the rear occupied approximately 2/3 of the second floor.
- Second floor consisting of five bedrooms, one kitchen, one full bath, and a separate toilet room off the pantry, and there was wiring and plumbing throughout.
- Some history of the case: On April 2, 2010 DBI received notification from the City Attorney's Office.
- On **May 4, 2010** the Inspector participated in the Task Force Inspection.
- On **June 10, 2010** a Notice of Violation was issued with the requirements of compliance.
- On **November 18, 2010** there was a first Director's Hearing and the hearing officer gave the property owner a 30-day continuance.
- On **July 13, 2010** the Hearing Officers gave appellant a 20-day advisement period to file the requisite permits or the Director's Order would be issued.
- On **February 11, 2011** there was an office visit where the owner met with Director Vivian L. Day and reviewed the nature of the illegal second floor construction. The work performed was rudimentary and did not continue construction so the Director reduced it from \$93,000 to \$20,000.
- On **February 11, 2011** the AAB Appeal was filed.
- On **March 25, 2011** a building permit was filed, # 201103252827 to comply with this Notice of Violation.
- The outstanding violations, Department records indicate that the requisite permits have not received final clearance to legalize or remove the second floor residential use.

- Reason for the appeal, the appellant is requesting more time to comply and a reduction of 9x investigative fee required by the San Francisco Building Code.
- Remedies required to abate violations are: Owner must obtain building, plumbing, and electrical permits, inspections, and return the property to its last permitted use or legalize current use and alterations.
- Recommendations are as follows: The Notice of Violation (NOV) was issued on **June 3, 2010** for illegal conversion and has been unabated for 10 months.
- The property owner did not file the requisite building permits to legalize or remove the second floor residential use until **March 25, 2011**, nine months after the NOV was issued.
- The property owner did not address the illegal residential occupancy on the second floor until eight months after the NOV was issued.
- The property owner's failure to comply with the NOV has prolonged life safety hazards and therefore impacting the safety of the occupants and the neighboring properties.
- Imposing and enforcing the Order is necessary to ensure that the property owner follows through and complies with the NOV issued by the Department.
- The findings are: Pursuant to section 107-a.5 of the San Francisco Building Code, the Abatement Appeals Board does not have jurisdiction to reduce the investigation for work without permit.
- The recommendations are: To uphold the Hearing Officer's decision to impose and enforce the Order of Abatement with the estimated value of work from \$93,000 to \$20,000 as reduced by the Director. Also to ensure the property owner reimburses commission provided by section 102-e of the San Francisco Housing Code.

President Lee called for any questions from the Board.

Vice-President Walker said that she had a couple of questions. What was the permit applied for in March, and is it for legalizing the residential use or is it for returning it to its original approved use?

Inspector Davison stated that he believes it was to put it back to its original use.

Commissioner Walker asked the following questions and Inspector Davison responded: Is the property occupied? Yes. How many tenants? Seven people on the second floor and I believe five in the rear property. Do you have any indication of how long this tenant has lived there? No I do not.

Commissioner Hechanova asked how long have the two units been rented?

Inspector Davison stated that as far as the Department's history shows, the inspection was done on May 4, 2010 so our history starts at that point.

Commissioner Hechanova said that there could be a history of when payments were made by the tenants to the current owner, and perhaps that information could be found at the Rent Board.

The Abatement Appeals Board Members and Inspector Davison continued to discuss the following items:

- Commissioner Hechanova asked is there any valuation that determined the drop from \$93K to almost 4 ½ times to \$20K. Just dating from our date receipt it was February 11, 2011 when the agents and owner met with the Director and found that the work was rudimentary and not finished construction and therefore reduced from \$93K to \$20K.
- Commissioner Hechanova asked of that amount is there a timeline associated with the work that could be done within a certain precedent of what the permit and the work that could be accomplished? The Director's Order was to be issued to have 10 days to file, 10 days to get the permit, 10 days to pick up the permit and 30 days to get the work done.
- Commissioner Hechanova asked if the owner had gone through the normal process how long would it take? You have to file the permit, get the occupants out of the property and commence the work to revert back to its normal use, so I estimate maybe two to three months.
- Commissioner Romero asked if it is a commercial building, and if the two units there are illegal? Inspector Davison stated yes to both questions.
- Commissioner Romero asked if there has ever been an application to legalize these units. From the records DBI has it does not indicate that, and I am not aware of any permits that have been issued to legalize it.
- Commissioner Clinch stated in the chronology on March 14, 2011 the attorney was hired and it says for acquiring possession: Are they trying to evict the tenants? Commissioner Walker suggested that maybe the Board could hear from the appellant or the tenants.
- Commissioner Walker asked if the zoning allows for residential use. I do not have that information.
- Commissioner Romero said that perhaps Deputy Director Sweeney could answer the questions that he and Commissioner Walker have.
- Deputy Director Sweeney stated that the only information that he has on the building is the legal use is a B occupancy which would be commercial, and I believe they would definitely have to go for change of use or change of occupancy.
- President Lee asked how much time is the appellant asking for. I do not know if there is a specific amount of time the appellant is asking for.

Alex Fong, Housing Inspector, stated that he did the inspection and was at the meeting with the Director and the agents of the owner so he could probably answer some of the Board's questions. Inspector Fong said that Director Day not only reduced the estimated cost from approximately \$93K down to \$20K and she made that valuation based on the photographs that he presented, but she also provided extra time to allow for compliance. Director Day stated that as long as the attorneys for the owners provided documentation that they were in progress towards evicting the tenants so they could proceed, then DBI would not go forward with code enforcement. Mr. Fong stated that there is no verbal official extension that they already have, and DBI already received a document following that meeting stating that they would be proceeding with that action. However, they could not do it right away after the meeting because he believes the eviction proceedings could not happen until a permit to actually dismantle the illegal units was issued. Mr. Fong stated that the Department has no eviction proceeding documents at this time, because it was not possible until they got the permit issued they could not go forward. They said that is

what they would be doing, and I have been doing the Task Force inspections for about 14 years for the Housing Inspection Division, and in these particular cases the City Attorney instigates the Task Force inspections because they have problems with complaints from the neighbors that go to the police. In this particular case the tenants upstairs in the illegal conversion area have been having parties on the weekends and cause quite a disturbance that resulted in multiple police reports being filed which DBI has copies. Inspector Fong said that is how the police got word of it in the first place and disturbance of the neighborhood and the commercial resident below who is present to answer any questions the AAB may have.

President Lee asked if Director Day asked the owners to submit an application to possibly change the use or legalize the units.

Inspector Fong stated that he does not believe the Director asked the owners to do so. Mr. Fong's Notice of Violation already directed the owners to do that, so there was no need to and it was up to the owners to legalize the units or revert back to commercial use or legalize the residential use.

Commissioner Romero asked if the extra time and the reduced cost on the fine was to get in there and tear out the existing kitchens and bathrooms and bring it back to the original use.

Inspector Fong said if that is what they chose to do they do so, but the main thing was to get moving and file an application.

Commissioner Hechanova stated of the pictures that were shown it also looks like there is an upper bunk with a ladder going up to it, and he asked if that was essentially a dangerous condition? Inspector Fong said that was typical of four of the rooms in the back when the partitions were put up, and he does not know if the tenants created those but they looked to be pretty sturdy and it is not flimsy wood.

Commissioner Hechanova said that this is furniture that was built in place as opposed to furniture that was brought in. Inspector Fong stated yes definitely. Commissioner Hechanova stated that a photograph exhibit shows exposed wires on the ceilings and no cover plates on the switches, so that was not corrected right away. Inspector Fong said that he has not been back for inspection to see if it was corrected, and he does not have photographs showing more extensive problems.

President Lee called for the appellant to come forward.

Mr. Bob Noelke stated that he was representing the owner of the property, and they are asking for approximately 90 days. Mr. Noelke said that the building permit was issued and a Notice of Termination was just filed a week or so ago by attorney Clifford Freed, and he has given the tenants a 60-day Notice of Termination. Mr. Noelke said that the appellant has the permit and they want to revert the property back to office space, and it should be noted in the history that when this space was rented it was a commercial space. The work that was done took place without the approval of the owner or his authorization or knowledge, and there are approximately seven people living there.

Mr. Noelke presented the following information:

- In 1993 part of the problem at that time was the \$93K was based upon an estimate.
- He went through the permit history and there were some partitions built in the 1930's and 1940's and some bathrooms were built in the 1920's.
- The property was originally a warehouse and the top floor was used as warehouse space, and it was a shifting to determine which things were done with permit and without.
- There was a fair amount of work done with partitions and there was an elevator put in over the years.
- It took time between that \$93K to bring it down to \$20K, and that was because we had to do research by going to the property, etc.
- Appellant is asking for 90 days so that the tenants can vacate and the owner can remove what was illegally put in, and bring the property to Code compliance, including handicapped access, a compliant bathroom, and simply leave the space the way it is and the way it was originally intended to be.
- DBI staff has been very helpful, the Director and Chief Inspector were very cooperative and Mr. Todd Schlessinger is present.

Commissioner Murphy asked if any of the tenants have leases.

Mr. Schlessinger stated there is the original rental agreement which is a commercial rental agreement, and he has copies of it and it was from 2005 and it is a month-to-month agreement. The tenants have been given a 60-day Notice by Clifford Freed who specializes in landlord/tenant cases, and this is a contentious issue in San Francisco when there is a residential unit that is non-conforming. They still have tenant rights under the residential rent stabilization ordinance, so it is a very tricky situation and any "gas thrown on this fire" will exacerbate it: This fire is well under control and they have a definite timeline to complete this.

Commissioner Murphy asked if Mr. Schlessinger could be more specific, and he stated that he understands there is a commercial space on the lower level and possibly there was a commercial lease for that.

There was further discussion between the Commissioners and the Appellant:

- Commissioner Walker asked if this residency began in 2005, because looking at the shower and so on it looks like these are much older than that.
- Appellant said those were there but showers are allowed in a commercial unit in the event that you are dealing with toxics, so the fact there is a shower there does not dictate anything.
- Commissioner Walker asked if the appellant has ever been there to inspect his property?
- Appellant stated yes he has.
- Commissioner Walker asked how much was Mr. Schlessinger renting the units for?
- Appellant stated \$4,500 per month.
- Commissioner Mar asked if this involved all seven of the tenants or was it just one person and everybody sublet from him which was mentioned in the report?
- The appellant stated that the original lease in 2005 was with one master tenant.

- Commissioner Mar asked if that person was still living there? Appellant said no.
- Commissioner Mar asked if the illegal work was done by the tenants? Appellant said yes to his knowledge, and the quality of the work as you can tell by the pictures it certainly was not done by a general contractor that he would have hired.
- Commissioner Mar asked if the property owner or property manager was aware of this work? Appellant stated no and he has been the manager for 15 years.
- Appellant said that in the kitchen area there are cabinets that are not attached to the wall and it has a very temporary nature to it, something like one would find at IKEA, Goodwill, or somewhere.
- Commissioner Hechanova stated that at the time it was rented out since it was a commercial space, at certain points there should be fire extinguishers.
- Appellant stated that there are fire extinguishers at the property, and Mr. Fong could testify to this.
- Appellant said when the City Attorney came to the property with the Task Force, the Fire Department was there, Vector Control, Alex Fong, and there were about 8 to 10 people going through the property.
- Commissioner Hechanova asked if there was a requirement to have the fire extinguishers checked on an annual basis.
- Appellant stated due to budget cuts they do not do that anymore, and in a commercial space he has no knowledge that the Fire Department has to go through the property and make the owner comply by having fire extinguishers.
- Appellant said this property has an R-3 occupancy, and there is one unit not legally there.
- Commissioner Hechanova asked if there was a lease for the property?
- The appellant said yes, and if the master tenant wants to sublet and the sub-tenant is viable financially, etc. then the owner has to accept them and cannot unreasonably withhold consent.
- Appellant stated that they are just asking for more time to work through the legal issues with the tenancy and do the construction and have it all legal.

President Lee asked if there was any public comment.

Ms. Elaine Milosa stated that she owns the business below the unit in discussion now, and there have been people living there since she bought the business in 2007. Ms. Milosa said that she is not aware that they are a business of any sort except to have parties on the weekends, and they are very disruptive to her business below. Ms. Milosa stated that the tenants have made threats to her employees, left trash and broken bottles; there is lots of noise disrupting her employees on a regular basis. Ms. Milosa's employees fear altercations with the tenants and human feces has been placed at her front door which started all of this and brought the police into it, and she has pictures. Ms. Milosa stated that the tenants have been an ongoing problem and if the property returns to commercial tenancy she would be delighted.

Mr. Scott Tyler stated that he has no legally binding information so he does not think he needs to be sworn in, and he was originally going to sit and observe this but he noticed something in the police report which was interesting. Mr. Tyler said in regards to this use he would imagine this is extensive sort of thing in the SOMA district that has gone on for decades, and the artists have a long history going back to the 1990's and it is something to be looked at. Mr. Tyler said that he

does not know the usage or the current tenants, but if they are going through the Rent Board and eviction process, even if the owner wants to get them out they cannot do it until they go to the Rent Board. Mr. Tyler stated that he does not know the current relationship between the sub-tenants and the owners, but if it is a process going he would recommend they get more time because they will need it to peaceably resolve this. Mr. Tyler said the City is well aware of the large number of illegal conversions to residences from apartments to artist warehouses to large multi-group buildings. Mr. Tyler stated that there are a large number of business owners living within them, and if the owner was there as a single occupant he believes there are a lot of laws that would allow that as a caretaker on the property. Regarding the police report, it looks like the tenants have had an unfortunately negative interface with the people downstairs and he knows one of the parties, Officer Larry Bertrand, was under investigation. Mr. Tyler said if this is regards to his report then he would refer to others.

President Lee called for rebuttal.

Senior Housing Inspector, Alan Davison, stated that time was granted for compliance and staff has been monitoring the case. The Department recommendations are still the same, to uphold the decision to impose and enforce the abatement with estimated work performed and to comply with the Notice of Violation.

Mr. Bob Noelke said that he was representing the property at 557 Howard Street, and he is requesting 90 days for the reasons outlined above. Mr. Noelke stated that once they have time then they can comply and have a Code complying building with a handicapped accessibility to the second floor. Mr. Noelke said that he thinks it will be a win-win for them.

There was final discussion that mentioned if 90 days was enough time because the owner had to get electrical, plumbing, and building signoffs. In addition, the issue of illegal occupancy was addressed. Commissioner said it would be good to allow as much time as possible to resolve the issue with the tenants. Commissioner Walker stated that she is troubled that the City is losing space that was probably occupied by artists in the community so she hopes the appellant can find a solution. Commissioner Walker stated that she has concern about the condition of these spaces and the habitability issues that are apparent in the photography, so health and safety issues are of utmost importance.

Commissioner Murphy made a motion, seconded by Commissioner Lee to allow 120 days to complete the work, or the Order of Abatement and assessment of cost will be upheld.

Secretary Aherne called for a roll call vote:

President Lee	Yes
Vice-President Walker	Yes
Commissioner Murphy	Yes
Commissioner Mar	Yes
Commissioner Romero	Yes

The motion carried unanimously.

2. CASE NO. 6746: 149 Buena Vista Tr.

Owner of Record and Appellant: Billy W. Ewing, 149 Buena Vista Tr.,
San Francisco, CA 94117

ACTION REQUESTED BY APPELLANT: That the City and State have been slow
in their assistance.

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

Chief Plumbing Inspector Steve Panelli said that there was a complaint filed regarding 149 Buena Vista Terrace on November 4, 2008. Mr. Panelli stated that one of the Plumbing Inspectors went out to the premises, met with the owner and found that work was being performed without a permit at that time so he posted the building with a Correction Notice in order to make corrections to what was installed.

Mr. Panelli continued to report on the following items:

- On **December 12, 2008** there was an office visit from George Wilson who told staff that he would come down with permits of work that was performed. The permits he had were for work performed, but not for the work performed inside the building.
- Part of the work that was performed was a backwater valve that was installed to prevent any kind of water entering into the building and flooding out the lower unit.
- The work that was performed was for the house trap and he believes 10 to 15 feet of building sewer that was outside of the building.
- On **December 16, 2008** there was a second posting for correction.
- On **December 18, 2008** there was a second letter sent as there was no compliance.
- On **March 17, 2009** there was a Director's Hearing.
- At the Director's Hearing, the hearing officer recommended that a permit be obtained within 30 days and the work to be corrected.
- On **May 21, 2010** a permit was obtained to correct the wrong address that was on the first permit, and this permit was to change 149 Buena Vista Avenue to the correct address of 149 Buena Vista Terrace. There was also a permit to add a backwater valve and reroute four-inch main sewer. No inspections were performed on this permit.
- Subsequently another notice was sent stating that the owner was still not in compliance and the work was not completed.
- Mr. Panelli's understanding, in speaking to the District Inspector, was that there was a lower unit and a backwater valve was put in front of the bathroom or unit to prevent any backwater from entering in from the main sewer in the right location but was never inspected.
- The problem occurred again so somebody went out and put in another backwater valve in front of the building right before it exited the building.
- Mr. Panelli discussed the problem of rain water leaders that are coming off the roof, and waste lines from the bathroom and kitchen and stated that if there is any kind of stoppage it could actually start to back up into the building.

- Mr. Panelli stated that in San Francisco there is a combined system to where the backwater valve has to be located just for lower fixtures only, not for rain water that is above so it can be controlled or above waste lines.
- Mr. Panelli said that at the time the Plumbing Inspector went to the location he found the above mentioned situation so he posted the building and that is where the Department is to date.

Commissioner Murphy asked what was the remedy for this situation; possibly a different location for the backwater valve? Mr. Panelli stated that there are two things: One is the main backwater valve has to be maintained by the owner of the property, because if something gets inside it can cause a problem. Mr. Panelli also said that one of the inspectors went to the site and asked that the lid be removed and the top was removed and he found there was something that was wrapped around it. Mr. Panelli said that this was one of the reasons there might have been a failure prior, and the remedy would be that the actual fixtures that require backwater protection have a valve that is put in a proper location, and if there are any other fixtures that are located on that system that would have backwater protection as well.

Commissioner Murphy asked if this is going to require some digging and identifying of lines. Mr. Panelli said that was correct and he has been told there is a backwater valve for that lower unit or the bottom area for that bathroom and there is a backwater valve there for protection. Mr. Panelli stated there is a laundry that is not on that system, and his suggestion would be a backwater valve that would be just for that laundry and everything that is in that lower area is protected.

Mr. Panelli said that there are areas in the City that tend to flood. Mr. Panelli stated that there is a backup from the main sewer, then there is a relief and he is willing to show anybody that design. Mr. Panelli stated that it is his own design on how to relieve the problem.

Commissioner Murphy asked about the remedy for the washing machine. Mr. Panelli said if a backwater valve is put on the washing machine and a backwater valve for the lower bathroom and everything is in the correct location that should stop any future backups as long as it is maintained and checked regularly. Mr. Panelli mentioned that he has not seen this location.

President Lee asked if the violation specifically said that the location of the backwater valve was in the wrong location. Mr. Panelli said yes this is the issue. President Lee said that his understanding is there is a backwater valve near the property line to catch the rain water and sewage that should not be there. President Lee asked for confirmation as to whether or not it should be on the other side so that even water could flow into the sewer. Mr. Panelli stated that it should just be for everything below the fresh air vent and house trap.

President Lee stated that Commissioner Murphy also asked if there are other flow vents. Mr. Panelli said that there are two total: One is for the lower unit or bathroom and one is after that goes to the main, and the front one is the issue.

Mr. Billy Ewing, one of the owners of 149 Buena Vista Terrace said that he prepared a statement for the purpose of explaining their side of the dispute. The statement read:

“I understand by your rules and regulations that a Notice of Violation has been issued to me, and violation of an improperly displayed backwater valve at my home in San Francisco. My tenants and I are affected by the problem and we (myself and Hanna Murphy) before you this morning to state for the record that the violation is misplaced. The violation was found after my partner, Michael Allen, and I once again calling the Public Utilities Commission (PUC) after having a flood of sewage water backing into our home. We then, that November 4, 2008, were incredulous that after calling the PUC yet again at each event, we were being cited by the agency we had looked to for answers throughout this ordeal. The level of this belief was heightened by an employee of the PUC telling me that afternoon that the main city pipe in front of our home was undersized according to city mapping. He then added that work we have paid our contractor to do in the street should have been done by the city. The statements were not solicited from him but rather volunteered. Armed with this information, I made an appointment with our then District 8 supervisor Bevan Dufty. At the meeting in December 2008, I spoke with Mr. Dufty; I was first made to meet with Laura Spanion of the PUC. She acknowledged our many calls to the agency but quickly added that they had nothing to do with the problem. Her demeanor changed upon hearing what I had been told by one of her employees. We have asked for input on our problem of flooding and received a letter that was dated June 2, 2006, from the Assistant Chief of Claims, Michael D. Haas. His basic response was to quote Section 103 of the Public Works Code the property owner is completely responsible for the maintenance and repair of a private sewer. These words along with our engineering contractor George Wilson cost us approximately \$40,000. \$40,000 is a large sum of money to be paid for sewer replacement on a three-unit building. George Wilson of L & W Environmental Services replaced our sewer, and that is why I’m standing in front of you this morning. He replaced the sewer in 2006 without a backwater valve, only to install it with an additional cost after the system’s first failure. We learned in 2010 that a backwater valve should have been installed at the time of sewer replacement. This information along with PUC responsibility beyond the curb was addressed in a survey inspection. This inspection was done on 04/26/2010, by Kenneth Young of the Plumbing Inspection Division for the city of San Francisco. My account here today is brief in comparison to the many months of disruption and reconstruction of our sewer. The years of 2006 through 2008, being in the dark as to the degree of fraud that had taken place we have a sewer that was somehow done without the proper degree of oversight. We believe that not only was the permit for the backwater valve not obtained but the entire system had not been properly installed and submitted. This has been a long, arduous, and circuitous route, and yet we are still without a solution. We had at one time hired a lawyer, but that seemed to go nowhere. He gladly received payments that got us nowhere. We are now awaiting an arbitration hearing at the State Licensing Board against George Wilson. What is perplexing – How was George Wilson able to install a complete sewer system without the proper oversight and city permits? We had been asking for the city’s assistance on this issue before, during, and after its installation in 2006, yet it was due to our repeated calls to the PUC that led to finding this error in 2008. It is he, George Wilson, that we feel should be made to pay these fines and fees for violations that never should have taken place.”

President Lee said that it is unfortunate that sometimes the public relies on the City for all the answers for certain things, but homeowners should seek advice from professional consultants as well. President Lee said that when Mr. Ewing said “lack of oversight” he did not think that the

Department of Building Inspection failed him in that sense, because staff does not tell customers how to solve the problem, and the City does not study their building. President Lee stated that staff may not know the extent of the problem and say, "You need to install a backflow preventer", but there could be a number of ways to do it. President Lee said that Mr. Ewing chose to install it so that is why it is now under the Abatement Appeals Board's jurisdiction, since it was installed incorrectly. President Lee stated that staff cannot look at Mr. Ewing's plans and say that they are missing something unless it is obvious, so this is something that the customer and engineer have to decide. President Lee said that staff would not know by looking at the plans that there is going to be a sewer problem, but the backflow preventer is in the wrong place.

Commissioner Romero asked if Mr. Ewing sued the contractor. Mr. Ewing said that he did not sue him but there is an arbitration hearing pending with the California State Licensing Board against him.

Mr. Ewing said that they contacted a lawyer to get to the bottom of all of the unanswered questions that came up, and in response to President Lee's comments they only found out when the city inspectors came to their home that a backflow valve should have been installed at the time of sewer replacement. Mr. Ewing stated that they did not know when they paid to have the sewer installed that it was their responsibility to have a backflow valve installed, and Mr. Wilson did not mention that this should be done until almost at the end of the installation. Mr. Ewing said that they had spent so much time and money that they thought they did not need the extra expense. Mr. Ewing stated that they depended on the engineer/contractor to do the job correctly.

Commissioner Romero asked when Mr. Ewing sought some type of resolution. Mr. Ewing stated that it was the end of 2009 or some part in early 2010 and only now is he getting letters stating that they are choosing which arbitrator to give the case to. Commissioner Romero asked what remedy Mr. Ewing was seeking, and said that he appreciates the fact that sometimes a person gets in contact with somebody who is less than capable of working on their property, and that is one of the reasons why they would look for an insured licensed contractor so if something like this happens and unfortunately they have to pursue some legal remedies, but his assumption is if Mr. Ewing had to pay any fees, those types of things would be wrapped into the remedy that he is seeking from the arbitration adjustment board.

Mr. Ewing stated that he gave the arbitration board a figure of what he was looking for since the work was incorrectly installed, and they suffered many floods since the installation of the new sewer.

Commissioner Walker asked if there would have been a mention of the backflow when the original permit was applied for or not. Mr. Panelli said that the permit was for the house trap and the building's sewer outside of the building and staff did not get inside the building. Mr. Panelli stated that there was no work that was done inside and the permit was obtained after the fact. Mr. Panelli said that the inspector did not know what was inside and he is looking at what is being replaced, and there should have been some kind of backwater protection and the secondary valve was installed after the fact and without permit.

Commissioner Mar stated that he agreed with President Lee that the public is responsible for the contractors they hire, and asked with the second installation of the backflow valve did Mr. Ewing ask the contractor if he had a permit and if he did pull a permit then there was no inspection requested otherwise DBI would have inspected it and signed it off. Commissioner Mar said that the plumbing inspector would have gone out to the site and upon inspection said if it was done right or wrong, and this would have been the time Mr. Ewing could have called the contractor and said he was not paying him until the inspection passed.

Mr. Ewing said that there was a lot of confusion with this case and he believes the permits are dubious at best. Mr. Ewing stated that there were a few months in between the installation of the sewer and the installation of the backflow valve, and they were not done continuously so at the point they were cited for violations for not having a permit, it seems that should have happened with the installation of the sewer. Mr. Ewing said if the installation was properly permitted and inspected the inspector would have said "Where is your backflow valve", but he did not.

Commissioner Murphy stated that he was curious about the work that was done on the inside of the building, and asked if there was a permit or not. Mr. Ewing said he would say no and none of this came to light until they got the violation in 2008. Mr. Ewing stated that the sewer was completed in 2006, and there was a subsequent flood and they called the PUC again and had their inspector come out because they could not believe there was still flooding after spending so much time and effort to get the problem fixed, and that is when the inspector gave them the citation stating that the backflow valve was incorrectly placed. Commissioner Murphy said it happens that people get a contractor that does a lousy job, but it is still the duty of the Department to enforce the Code and make sure the work is done correctly.

Mr. Ewing stated that they have always tried be responsible homeowners and do the right thing for their tenants, and that is demonstrated by the amount of money and time spent having this done and they had diligence with contacting the PUC and calling the City and asking for assistance. Mr. Ewing stated that he understands it is ultimately the homeowner's responsibility, but he thinks that they look to professionals and agents with expertise to tell them whether they are going about things the correctly and in this instance they only got the direction after the fact. Commissioner Murphy stated that Mr. Ewing seems to be a very responsible homeowner, but he just had bad luck with the wrong contractor.

Commissioner Hechanova asked when was the last time that the basement or problem with flooding occurred. Mr. Ewing said that he believes it was last year in 2010 but he could have his tenant speak, because she is the one most affected by this since she lives in the apartment that floods. Commissioner Hechanova stated that he was curious about the most recent rains, some that were fairly of volume earlier this year. Mr. Ewing said that there has not been any flooding this year in 2011. Commissioner Hechanova said that he is trying to connect whether the system had failed or basically might have been a condition of something back then, and he believes if the system is at fault something of a volume that would have pushed it to a failure point would have been most recently when the rains came so maybe the system is working.

Mr. Ewing said that the instances of flooding that they had began in 2005 until present have been sporadic and have been at odd moments, so he cannot speak to how it happens or why but he

does know that it was during times of heavy, heavy rainfall. Mr. Ewing stated that when there was the El Nino periods of rain flooding happened but for whatever reason it did not happen this year during the heavy rainfall.

Commissioner Romero asked if Mr. Ewing had the property inspected when he bought it. Mr. Ewing said yes it was inspected when he purchased it 18 years ago. Commissioner Romero asked if the problems started before or after the installation, and said when the sewer was either modified or replaced was it because they were starting to have problems, or did they start having problems after the contractor fixed it. Mr. Ewing said that they started having problems with some flooding in the unit before it was fixed so they called their insurance company, and they came out and did the camera work. Mr. Ewing stated they also called a local plumber, Roto Rooter, to put traps in the street but that did not work. Mr. Ewing said they contacted a number of other plumbers but nothing was resolved.

President Lee stated that the problem of flooding seems to still exist, and there is still a Notice of Violation of the backflow preventer in the wrong place and he asked what Mr. Ewing's intention was to solve this. Mr. Ewing said that he plans to do what the City Code states but they are exhausted financially and emotionally at this point and do not have the funds at this time. Mr. Ewing stated that it seems that throwing money at this problem has gotten them nowhere but at the hearing today and there has been a lot of inconvenience for them and their tenant. Mr. Ewing said that his tenant has been displaced from her home maybe six or seven times and he is amazed that she is willing to support him, and he thinks most people would be ready to sue him. President Lee asked if Mr. Ewing could get the Notice of Violation lifted and asked when he could get the work done. Mr. Ewing stated that he hopes he could do it as soon as arbitration is complete, and he hopes that they would see things in their favor. Mr. Ewing said that he knows this is outstanding and they need to get it fixed but cannot afford to right now.

President Lee called for public comment.

Ms. Hannah Murray was sworn in and stated that she just wanted to back up what Mr. Billy Ewing was saying about their ambition to resolve the issue, and it has been constant and ongoing. Ms. Murray said that this particular instance is for the backflow valve and the placement of it, but there could be a potentially larger issue with the sewer in the main road. Ms. Murray stated that it seems that the floods happen after a time of very little rain so there is a lot of debris and leaves in the gutters and on the roads, because they happen to live on a hill and they make a corner in front of their house and that is the corner where Mr. Ewing was stating the PUC employee, when one of the pipes makes a turn is actually smaller than stated on a city map. Ms. Murray said that she does not know if it has to do with what is being talked about today, but she just wanted to point out that it seems that is the crux of the problem.

President Lee called for rebuttal.

Mr. Panelli stated that he wanted to answer some of the field questions that were brought up, and one was there was not a permit obtained so that is one problem and second if a permit was obtained the Department would have resolved the issue at that point. Mr. Panelli said that the third thing is that the contractor that was hired was a licensed contractor and is allowed to do that

work since it is what he was hired for. Mr. Panelli stated that flooding happened but one of the inspectors found that someone put a bypass in that was lifted open, and normally if it is raining there would be flooding but there was not any flooding, and one of the reasons is because somebody put a bypass in and when that closes if any rain gets in then it goes to the sidewalk or on the side of the house and DBI would have never allowed that. Mr. Panelli said that if the backwater valves are put in the right location then there should not be any issues as long as they were maintained. Mr. Panelli mentioned that he has another design that might be able to help as well for a relief point at the house trap so if there is a major flood it would relieve the water and allow it to escape out onto the street instead of into the building, and he is willing to help the owner resolve this issue. Mr. Panelli stated that the plumber has contacted him and has offered to fix this problem with the owner but DBI has had no inspection on the previous permit.

Commissioner Murphy asked if it was a relatively big job to fix this. Mr. Panelli stated that he has not been out to the site, but he knows they are willing to make the corrections to resolve this issue. Commissioner Murphy asked if this entails tearing up the living spaces or anything. Mr. Panelli said he could not answer 100% because again he has not been there.

Commissioner Hechanova stated that on the chronology of time, as Mr. Ewing described this train wreck dates back to 2006 and Inspector Panelli was involved or somehow has been to the property, so he asked if he could describe what he may have done in 2006. Mr. Panelli said that he has no idea how his name was involved because he cannot remember being out there at all. Commissioner Hechanova stated that Mr. Panelli's name was mentioned in a letter that Mr. Ewing submitted and Mr. Panelli said that he had no recollection of it, and does not see anything on any permits that have his name on it. Commissioner Hechanova stated that perhaps his name was listed inaccurately, and said to Mr. Ewing that the Commission is very supportive of staff and wanted to make sure they are not in any way mis-listed.

Mr. Ewing stated in 2006 Mr. Davantes came to their home after a flooding episode, and the reason Mr. Panelli's name is there is because he started logging everything and keeping business cards. Mr. Ewing said that Mr. Panelli gave them his card but he believes it was probably less than two minutes and he came into the basement, took a quick look around, gave them his card and left.

Mr. Panelli said that he may have been the supervisor at that time, and Inspector Davantes may have put him down as part of the record and he thinks that may be how he may have been involved.

Commissioner Walker stated that this is really unfortunate and the Board "feels their pain" but unfortunately the Building Code is the Building Code and that is what the Abatement Appeals Board is there to apply. Commissioner Walker said that her concern is when there is a flooding situation at a place and the owner comes in to do a permitted replacement or job, it is unfortunate that staff does not check to make sure if there is a backflow valve issue.

Mr. Panelli stated that plumbing inspectors will do the inspection and check to make sure there is a backflow valve if it is required and they are inside of the building but they may not see the lower unit if there is no work being done and they are just looking at that section. Mr. Panelli

said if the inspector went inside the building and the owner did a major replacement, at that time, they would say the owner needed to put in backwater protection at this location as well and would not approve the job. Mr. Panelli said the inspector would approve what is in the street but not what is in the unit.

Commissioner Walker asked about the backflow valve issue that was wrapped up and caught open. Mr. Panelli said that he never saw it. Mr. Panelli stated that was installed after the installation of the sewer and somebody went out and installed these backflow preventers, and there are no permits for the installation. Mr. Panelli said that DBI never approved them and were never able to correct the incorrect location. Commissioner Walker asked if 30 days to obtain a plumbing permit for the backwater valve and doing the final inspection is reasonable. Mr. Panelli said yes it is reasonable and it is a job of breaking up the concrete or removing the old backwater valve, capping off the bypass going to the location of where the laundry is, the opening of that line, and installing another backwater valve or whatever else is below the location that is getting flooded but it is definitely doable in 30 days.

President Lee stated that Mr. Ewing had three minutes for rebuttal.

Mr. Ewing stated that his only comment at this point was he heard the gentleman say 30 days and it has been quite a few years and they have not gotten any finality out of this problem. Mr. Ewing said that he thinks it is honest contractors, conscientious workers, people that do as they say and they were told that their work would be permitted, and he thinks what the gentleman just said before and like he was saying that the work inside the home, the installation of the sewer was not permitted. Mr. Ewing stated that now he is just left with a lot of doubt and a lot of fear around this issue.

Commissioner Murphy asked what Mr. Ewing saw as being reasonable and he understands all the other problems, but what the Board is trying to do is figure out how to work with him yet he is saying that 30 days is going to be hard. Commissioner Murphy stated that the bottom line is Mr. Ewing has to do it and he asked if the Board gave him 60 days to fix this would that be helpful. Mr. Ewing said that he thinks 60 days would be helpful, but he does not think he would get it done and he is looking to the arbitration with Mr. Wilson.

Commissioner Romero stated that he can guarantee that this is not going to happen before the arbitration.

Commissioner Walker added that it does not affect whether Mr. Ewing has to get the work done or not, and he could proceed on and it will not affect his litigation.

Commissioner Romero said that the arbitration process could take a year or two.

Mr. Ewing stated that he would just ask that the board be as lenient as possible, knowing that he and his partner have tried their best to get the situation corrected. Mr. Ewing said that he would just ask for leniency as far as the timeline is concerned to investigate, acquire permits, to hire conscientious, hard-working, honest contractors to do the work that needs to be done and he does not know how long that is going to take. Mr. Ewing stated that he wishes he could give a 30, 60,

or 90-day answer but he does not know but he does know that there is work to be done and so far all the work they have done has been for naught.

Commissioner Murphy said he thinks the commissioners are really trying to work with Mr. Ewing.

Commissioner Walker made a motion to give Mr. Ewing 60 days to interview some people and get the work done.

Commissioner Romero stated that Mr. Ewing should get references.

Commissioner Mar asked if the permit was in place. Mr. Panelli stated that there was a permit obtained May 21, 2010 to do the corrections of the backwater valve, but no inspections have happened.

Mr. Ewing stated that the permit was actually a permit to take the place of a permit that was presented to them for 149 Buena Vista Avenue, and it was for a different owner and listed a different address. Mr. Ewing stated that he believes this permit was somehow to correct a permit for the one that should have taken place in 2006, not a permit for the corrective work.

Commissioner Murphy said that the commissioners have heard everything, but somebody needs to “carry the ball” and since he is the owner Commissioner Murphy suggests that Mr. Ewing does.

Commissioner Walker stated that if there is an issue about the other permit that is out there, she suggests that the Notice of Violation needs a new permit to resolve the issue and she moves to uphold the Department’s suggestion except that it is amended to 60 days.

Deputy City Attorney Francesca Gessner clarified Commissioner Walker’s motion was to give the appellant a 60-day stay to comply and if he complies within 60 days then the order will not issue, and that she is upholding the assessment of costs. Commissioner Walker said yes this was correct.

Commissioner Walker made a motion, seconded by Commissioner Murphy, to give the appellant a 60-day stay to comply and if he complies within 60 days then the Order of Abatement will not issue, and the Board is upholding the assessment of costs. The Commissioners voted as follows:

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

The motion carried unanimously.

E. PUBLIC COMMENT

There was no public comment.

F. ADJOURNMENT

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

The meeting was adjourned at 10:40 a.m.

Respectfully submitted,

Sonya Harris
Commission Secretary