



DEPARTMENT OF BUILDING INSPECTION

**City & County of San Francisco
1660 Mission Street, San Francisco, California 94103-2414**

ACCESS APPEALS COMMISSION

MINUTES

Regular Meeting

Wednesday, November 9, 2005

Room 416, City Hall

1. CALL TO ORDER AND ROLL CALL

President Lim called the meeting of the Access Appeals Commission to order at 1:05 P.M.

COMMISSION MEMBERS PRESENT: Mr. Arnie Lerner, President
Ms. Alyce G. Brown, Vice-President
Ms. Enid Lim
Vacant

COMMISSION MEMBERS ABSENT: Ms. Roslyn Baltimore

CITY REPRESENTATIVES: Ms. Judy Boyajian, Deputy City Attorney
Mr. Rafael Torres-Gil, Secretary
Ms. Doris M. Levine, Reporter
Mr. Richard Hallorand

2. PUBLIC COMMENT:

There was no public comment.

3. APPROVAL OF MINUTES:

The minutes of October 12, 2005 were reviewed. Commissioner Lerner identified a correction on page two of the minutes. The minutes, as corrected, were approved.

4. REVIEW OF COMMUNICATION ITEMS:

Mr. Torres-Gil noted the distribution of several items: Reimbursements for the last meeting and an Emergency Supplement to the California Building Code dated December 1st 2005.

5. ELECTION OF OFFICERS:

The commission referred to the chronology of past appointments to the officer positions for the commission.

Ms. Boyajian asked the commission if they were ready to proceed with the election in the absence of Commissioner Baltimore. It was their legal option.

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Commissioner Brown said that according to the rules it is a progression it - is not random.

Commissioner Brown and Ms Boyajian outlined the past appointments.

Commissioner Brown nominated Commissioner Lerner for the position of President.

President Lim seconded the nomination.

Vote on the nomination of Commissioner Lerner for the position of President:

President Lim	Aye
Commissioner Lerner	Aye
Commissioner Brown	Aye

Commissioner Lerner was elected President of the AAC.

President Lerner nominated Commissioner Brown for the position of Vice-President.

Vote on the nomination of Commissioner Brown for position of Vice President:

President Lim	Aye
Commissioner Lerner	Yes
Commissioner Brown	Aye

Commissioner Brown was elected Vice President of the AAC.**6. PRESENTATION OF ADMINISTRATIVE BULLETIN – 056.**

Mr. Neil Friedman presented AB –056, Disabled Access Compliance Status Documentation.

The presentation was followed by a question and answer session between Mr. Friedman and the commission pertaining to the Administrative Bulletin.

7. COMMISSIONERS AND STAFFS QUESTIONS AND COMMENTS:

Mr. Torres-Gil and the commissioners discussed the status of the vacancy to the AAC.

President Lerner indicated his desire to have as a topic for an AAC meeting – the discussion on the rule or standard for establishing the financial feasibility for making accessibility improvements. What's reasonable and how does the Building Department decide – say the project is over the \$ 109K threshold amount and you ask for a hardship because the cost of accessibility upgrades is too much – how do people establish whether it is too much. Is the owner Wal Mart or Mrs. White's Grocery Store? Nobody really has it down and maybe it is worth a discussion. When it comes up before the commission maybe the commission can frame the discussion on what is feasible or reasonable – on economic terms.

Mr. Torres-Gil asked if the question was – how do we establish valuation /cost of renovation.

President Lerner said, not necessarily that. Once the cost is established, the commission is asked to make a judgment whether it is reasonable to have them do the (access upgrades) and it is hard to do that without knowing what the applicants resources are relative to the cost of (upgrades). If it is Wal Mart, that is relative no-brainer, but not everybody is Wal Mart. On the last appeal he asked the architect if they owned any other buildings? They owned a couple of other buildings and he thought, yes, they could probably afford it. But if it's a \$400k improvement and they own a corner grocery store, that's different. Should we be asking them to

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provide us more financial documentation as to why the (upgrade costs) are unreasonable or not. It's a problem everyone has had in making that decision - that's the type of discussion that's necessary and it keeps coming up that (the costs) are too much. We haven't talked about standards to compare it to, to make a decision whether to accept it or not.

Ms. Boyajian said that it is only one of the criteria. There are others, that is, the proportion of costs of access, to the cost of the project, regardless of how much money the owner might have. The other is the feasibility of the project.

Vice-President Brown said that she understands President Lerner's frustration but she does not think they could ask for the financial support on this, because then they (the commission) would be discriminating. If they have deep pockets they could afford it. As in the case last week where it was 26% rather than 20% and it was a huge job, we both sat here and thought it was a matter of 6% more - a little bit more - if you can go this far, you can go that far. None of the members of the commission thought that the financial burden was the reason. It was physical and historical reasons because if it was just financial, she would have voted against it. That is why each case stands on it own. There really isn't a measure - it is really a feel. That's why they come to use for that measure. Where else can they go? You can't really ask them for their financial balance sheet - it would be most unfair.

President Lerner said it would not necessarily be a balance sheet but if they came in and said they could not afford this or it's unreasonable - how do you evaluate that - just a feeling.

Vice-President Brown said that 30 or 40% would be unreasonable.

Ms. Boyajian said that they might be getting into a Brown Act problem here because they are having a major discussion of something that is not on the agenda. If they want to put it on the agenda, that would be fine.

Mr. Torres-Gil said that he would look to Mr. Kornfield as a resource on this topic. They could meet on December 14th or the 28th. The commission agreed on the 14th.

Vice-President Brown asked if the AB-056 Certifications required AAC approval.

Mr. Torres-Gil said that the bulletin does not call for ratification by the AAC.

President Lerner referred to the last paragraph of the bulletin that referenced the role of AAC decisions in the AB-056 process.

Ms. Boyajian said that that applies when they actually do work that is normally appealed to the AAC - tenant improvements, or, if a complaint is filed that the building is not accessible. The building isn't forever insulated from coming before the commission or from the commission looking at all the path of travel issues.

Vice-President Brown asked if it was the issues that followed the expiration of the time periods (associated with the certification). Do they then come to the AAC for reinstatement?

Ms. Boyajian said that she thinks what DBI is doing is separate thing from the permits reviewed for projects. It sounds like they actually issue a permit for tracking the certification but that doesn't change the jurisdiction of this board for permits for work. If they are proposing to require ratification of hardships, they would still come (to the AAC). The original certification does not come to the AAC but the AAC could review that path of travel at the time they are looking at the work - if it comes.

Vice-President Brown said that it would be to everyone's advantage if they came to the AAC and then got certified.

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Mr. Torres-Gil referenced the appeal regarding 100 Van Ness that involved a Path of travel certification.

President Lerner outlined the time limits associated with the Administrative Bulletin and an AAC decisions. The bulletin does not change any of the jurisdiction of the AAC. The point of the bulletin is to avoid resubmitting plans every time.

Mr. Torres-Gil indicated that the compliance letter identifies the features reviewed and those that were not. If the plan checker feels they have exceeded the boundaries of that letter they would deal with that as a separate issue.

Ms. Boyajian said that another thing that we are getting from this is the inspection of the existing conditions to certify that what they are saying is there.

8. PUBLIC COMMENT:

There was no public comment.

9. ADJOURNMENT:

The meeting adjourned at 2:00 PM.

Neil Friedman

Rafael Torres-Gil

Senior Building Inspector

Department of Building Inspection

Secretary to the Access Appeals Commission