

## **BOARD OF APPEALS**

### **CITY & COUNTY OF SAN FRANCISCO**

#### **DRAFT MEETING MINUTES – WEDNESDAY, OCTOBER 19, 2022**

#### **HYBRID MEETING (IN-PERSON AND REMOTE ACCESS VIA ZOOM)**

#### **5:00 P.M., CITY HALL, ROOM 416, ONE DR. CARLTON B. GOODLETT PLACE**

PRESENT: President Rick Swig, Vice President Jose Lopez, Commissioner Alex Lemberg, Commissioner John Trasviña, and Commissioner J.R. Eppler.

Jon Givner, Deputy City Attorney, Office of the City Attorney (CAT); Chris Buck, Urban Forester, San Francisco Public Works, Bureau of Urban Forestry (SFPW-BUF); Julie Rosenberg, Executive Director; Alec Longaway, Legal Assistant.

#### **(1) PUBLIC COMMENT**

At this time, members of the public may address the Board on items of interest to the public that are within the subject matter jurisdiction of the Board except agenda items. With respect to agenda items, your opportunity to address the Board will be afforded when the item is reached in the meeting with one exception. When the agenda item has already been reviewed in a public hearing at which members of the public were allowed to testify and the Board has closed the public hearing, your opportunity to address the Board must be exercised during the Public Comment portion of the calendar. Each member of the public may address the Board for up to three minutes. At the discretion of the Board President, public comment may be limited to two minutes. If it is demonstrated that comments by the public will exceed 15 minutes, the President may continue Public Comment to another time during the meeting.

SPEAKERS: Carl Macmurdo welcomed the three newest Commissioners. He stated that he was part of the taxi industry and noted that on November 16, 2022, the Board would hear three taxi appeals that had been continued. He indicated that he was the agent for Mr. Cortesos and Mr. Horbal, the appellants in two of those cases. He stated that the issues heard in the taxi cases were simple: Whether or not the Americans with Disabilities Act protects medallion holders and whether the medallion was a work permit or business operating permit. He further stated that he would send the Commissioners two emails for general public comment. One email would pertain to the hearing the previous day by the SFMTA, the City's taxi regulator. He noted that the SFMTA Board of Directors rejected the attempt by the SFMTA Acting Taxi Director to eliminate the right of taxi permit holders to appeal to the Board of Appeals when facing adverse action. Mr. Macmurdo noted that the second email would describe the last 50 years of the history underpinning these taxi issues.

**(2) COMMISSIONER COMMENTS & QUESTIONS**

**SPEAKERS:**

President Swig congratulated the Golden State Warriors on getting their championship rings.

Vice President Lopez stated that the Commissioners had recently received a notice that the Board of Appeals would no longer have jurisdiction over taxi appeals and that these types of cases would be decided by the SFMTA. He stated that he thought it would be worthwhile if the Commissioners would consider the possibility of sending a letter to the SFMTA which explained the points the Commissioners took into consideration when deciding these types of cases. He proposed putting an Item on the November 16, 2022 agenda to discuss these matters.

Commissioner Trasviña joined Vice President Lopez in his request to have this discussion. He stated that as part of this discussion he wanted to talk about the issue of how the departments, in effect, take away cases from the Board of Appeals. He further noted that the Board's website stated that the Board of Appeals provides the final administrative review process on the appeals of a range of city determinations. He stated that it would be helpful for the public and new commissioners to know what those determinations are and how they get put on and taken off the list. [Thereafter, President Swig suggested that Commissioner Trasviña's proposed discussion be put on a later agenda as a training matter.] In response to President Swig's suggestion, Commissioner Trasviña stated that, while it may be a training item, it was also a substantive issue to as to whether the Board has the authority to decide what is in the Board's mandate or whether the agencies have this authority.

Commissioner Lemberg commended Vice President Lopez for having the courage to bring this matter up and stated that they looked forward to discussing it in more detail on November 16<sup>th</sup>.

PUBLIC COMMENT: Carl Macmurdo spoke about the legal authority for the Board's jurisdiction over taxi cases. He stated that one of the SFMTA directors chided the Acting Taxi Director for sending the Board of Appeals the memorandum regarding the SFMTA's decision to discontinue using the Board of Appeals for appeals of taxi permits.

**(3) ADOPTION OF MINUTES**

Discussion and possible adoption of the October 12, 2022 minutes.
---

ACTION: Upon motion by Vice President Lopez, the Board voted 5-0 to adopt the October 12, 2022 meeting minutes as revised by Vice President Lopez. More specifically, for Item 4, Vice President Lopez wanted to add that the person providing public comment referenced the 2017 study by the U.C. Berkeley Turner Center. This study stated that appeals drove up construction costs in San Francisco.

PUBLIC COMMENT: None.

**(4) APPEAL NO. 22-065**

600 ALVARADO STREET HOMEOWNERS' ASSOCIATION, Appellant(s)  vs.  SAN FRANCISCO PUBLIC WORKS, BUREAU OF URBAN FORESTRY, Respondent	600 Alvarado Street. Appealing the ISSUANCE on September 7, 2022, to 600 Alvarado Street Homeowners' Association, of a Public Works Order (DENIAL of an application to remove two Monterey Cypress trees, one a street tree within the public right-of-way and one a significant tree on private property. The trees do not pose a high or moderate risk of failure). ORDER NO. 207050. FOR HEARING TODAY.
--	---

ACTION: Upon motion by President Swig, the Board voted 5-0 to grant the appeal and issue the order on the condition it be revised to require that the department: (1) annually monitor the condition of the trees and report back to the appellant, (2) replace the cable between the two main stems of the street tree, and (3) remove the decaying stub and dying branch on the street tree. This motion was made based on the of recommendations from the department.

SPEAKERS: Beth Strutzel, agent for appellant; Chris Buck, BUF.

PUBLIC COMMENT: John Nulty and Michael Nulty spoke in support of the department.

**(5) APPEAL NO. 22-052**

PETER POON, Appellant(s)  vs.  DEPT. OF BUILDING INSPECTION, Respondent PLANNING DEPT. APPROVAL	331 28th Avenue. Appealing the ISSUANCE on July 13, 2022, to Kenny and Amy Tseng, of an Alteration Permit (comply with Complaint Nos. 202182981 and 202183006; first floor add bathroom, convert existing exercise and play room to bedroom, office and kitchenette; add interior stair connection between first and second floor at ground floor). PERMIT NO. 2022/0711/8177. FOR FURTHER CONSIDERATION <b>Note: On August 24, 2022, upon motion by Commissioner Lemberg, the Board voted 5-0 to continue this matter to November 16, 2022, so that the Planning and Building Departments could conduct an inspection of the subject property. The matter was thereafter rescheduled to October 19, 2022.</b>
--	---

ACTION: Upon motion by President Swig, the Board voted 5-0 to grant the appeal and revoke the permit on the basis that it was not properly issued.

SPEAKERS: None.

PUBLIC COMMENT: None.

**(6) APPEAL NO. 21-088**

<p>GRASSY GROVE, LLC, Appellant(s)</p> <p>vs.</p> <p>ZONING ADMINISTRATOR, Respondent</p>	<p>145 Jefferson Street.</p> <p>Appealing the ISSUANCE on August 18, 2021, to Enso Management Company, of a Letter of Determination (The request seeks confirmation of the following: 1) whether a proposed cannabis museum, including museum tour space, exhibition cannabis growing and processing spaces, and a gift shop containing a licensed retail cannabis dispensary would be considered a General Entertainment use; and 2) whether the gift shop, containing a licensed retail dispensary selling cannabis products, would be subject to the location controls of Planning Code Section 202.2, specifically, the required 600-foot buffer between Cannabis Retail establishments. The Zoning Administrator determined that the proposed cannabis museum would be a use that principally provides entertainment and leisure to the general public and would generally meet the definition of General Entertainment. If certain criteria are met, then the cannabis retail activity within the proposed museum is considered an accessory use and is not subject to Planning Code requirements applying to Cannabis Retail as a Principal or Conditional use, this includes the 600-foot buffer location requirements prescribed by Planning Code Section 202.2).</p> <p>RECORD NO. 2021-001699ZAD.</p> <p>FOR HEARING TODAY.</p>
---	--

**ACTION:** Upon motion by Commissioner Eppler, the Board voted 5-0 to continue this matter to December 7, 2022, to allow the Planning Department to submit a late brief to be submitted by 4:30 p.m. on December 1, 2022.

**SPEAKERS:** Commissioner Lemberg disclosed that they have a professional relationship through their service on the Board of the Eureka Valley Neighborhood Association and a personal/social relationship with the appellants, Desmond Morgan and Ray Connolly. They further stated that they had consulted with City Attorney's Office and that they would be fair and impartial in handling this appeal.

**PUBLIC COMMENT:** None.

**ADJOURNMENT.**

There being no further business, President Swig adjourned the meeting at 6:16 p.m.

The supporting documents for this meeting can be found at the following link:

<https://sf.gov/meeting/october-19-2022/board-appeals-hearing-october-19-2022>

A video of this meeting, can be found at the following link:

[https://sanfrancisco.granicus.com/player/clip/42306?view\\_id=6&redirect=true&h=f00197fa39b4f800f5682bcd6cdd770d](https://sanfrancisco.granicus.com/player/clip/42306?view_id=6&redirect=true&h=f00197fa39b4f800f5682bcd6cdd770d)