

BOARD OF APPEALS

CITY & COUNTY OF SAN FRANCISCO

MEETING MINUTES – WEDNESDAY, APRIL 26, 2023

REGULAR 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.

Jen Huber, Deputy City Attorney, Office of the City Attorney (CAT); Tina Tam, Deputy Zoning Administrator, Planning Department (PD); Matthew Greene, Chief Building Inspector, Department of Building Inspection (DBI); 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: Barry Taranto spoke about a recent SFMTA Board meeting. He stated that the Board of Appeals (BOA) should have been informed about the SFMTA's agenda item and was concerned by the lack of communication to the BOA about possible SFMTA actions. He further stated that Julie Rosenberg was formerly the head of the SFMTA Hearing Division and that her intimate knowledge of how it works should be included in the Board's future discussions on this topic.

Dirk Neyhart asked whether there was any other city permit holders that had been denied their right to appeal.

(2) COMMISSIONER COMMENTS & QUESTIONS

SPEAKERS: Commissioner Trasviña acknowledged Administrative Professionals' Day and thanked Alec Longaway, the Board's Legal Assistant, and Xiomara Mejia, the Board's legal clerk, for their service to the Board of Appeals.

President Swig wished the Golden State Warriors the best of success in the playoff game.

PUBLIC COMMENT: None.

(3) ADOPTION OF MINUTES

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Discussion and possible adoption of the April 12, 2023 minutes.

ACTION: Upon motion by Commissioner Lemberg, the Board voted 5-0 to adopt the April 12, 2023, meeting minutes.

PUBLIC COMMENT: None.

(4) APPEAL NO. 23-009

KATHLEEN MARTIN-MCKEON, Appellant(s) vs. DEPT. OF BUILDING INSPECTION, Respondent PLANNING DEPT. APPROVAL	1870 Market Street. Appealing the ISSUANCE on March 1, 2023, to Bridgeway Vista LP, of a Demolition Permit (demolish one-story office building). PERMIT NO. 2015/05/01/5157. FOR HEARING TODAY.
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ACTION: None. The appeal was withdrawn prior to the hearing.

SPEAKERS: None.

PUBLIC COMMENT: None.

(5) APPEAL NO. 23-008

FRIENDS OF THE MISSION GREENWAY, Appellant(s) vs. DEPT. OF BUILDING INSPECTION, Respondent PLANNING DEPT. APPROVAL	957 Treat Avenue. Appealing the ISSUANCE on March 2, 2023, to 17th and Peralta LLC, of an Alteration Permit (replace damaged gate in kind, north of lot; approximately 16 feet wide and 8 feet tall). PERMIT NO. 2023/03/02/2910. FOR HEARING TODAY.
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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.

President Swig further proposed that the Board draft a letter to the District Supervisor to ask her to assist the constituents to resolve the dispute about ownership and access to the parcel. He suggested putting the letter on a future agenda to be considered for adoption by the Board. Commissioner Eppler suggested that the letter be copied to the Rec & Park Department, the Assessor's Office and the Treasurer. Commissioner Trasviña and Vice President Lopez were supportive of the proposed letter. Commissioner Lemberg volunteered to draft the letter and suggested copying the Mayor, given that she oversees the Real Estate Department.

SPEAKERS: Elizabeth Creely, agent for appellant; Lara Hanna, agent for appellant; Alex Menendez, agent for permit holder; Rudy Rucker, agent for permit holder; Tina Tam, PD; Matthew Greene, DBI.

PUBLIC COMMENT: Miguel Lopez, Jay Martin, Howard Fallon, Cindy Arnold, Briana Levine, Carol Brownson, Linh Hoang, Scott Feeney, Anna, Dheyaniira Calahorrano, Arianna Hee, Annie Beust, Andy Gillis, Michael Crayhan, Denhi Flor, Caroline Dutton, Jorge Romero, Devisha, Jeff Yip, and Michael Olexo spoke in support of the appellant.

Lawrence Bito and Heather Lubeck spoke in support of the permit holder.

(6) SPECIAL ITEM: DISCUSSION RE THE APRIL 20, 2023 LETTER FROM THE SFMTA TO PRESIDENT SWIG REGARDING TAXI PERMIT APPEALS

On January 9, 2023, Vice President Lopez sent a letter to the SFMTA, on behalf of the Board of Appeals, regarding taxi permit appeals. The letter addressed whether taxi permit appeals should continue to be heard by the Board of Appeals (BOA), and if not, the factors considered by the BOA Commissioners when making decisions on these types of cases. On April 20, 2023, Jeffrey Tumlin, Director of Transportation for the SFMTA, sent a letter to President Swig regarding the issues raised by Vice President Lopez. Director Tumlin further stated that the SFMTA has discontinued the informal practice of allowing the BOA to hear appeals related to taxi permit decisions.

SPEAKERS: President Swig, Vice President Lopez, Executive Director Rosenberg, Commissioner Lemberg, Commissioner Trasviña, and Commissioner Eppler.

PUBLIC COMMENT: Charles Rathbone stated that it was distressing to have the right to appeal to the BOA extinguished by bureaucratic fiat. He stated that the BOA retained authority under the Charter to review taxi permit decisions. He also thanked the Board for the attention they had given to this issue.

Dirk Neyhart stated that he had been subject to the rapacity of the SFMTA by losing his license. He asked if the Board could identify any other permit or department's decisions that had been removed from the BOA's review process.

Marcelo Fonseca stated that he found Director Tumlin's letter insulting to the taxi industry. He stated that the cases heard by the Board proved that there was no ethical firewall at the SFMTA and that the BOA was the only avenue to a fair and impartial hearing. He talked about how difficult it was for him to get a medical exemption from the full-time driving requirement.

Carl Macmurdo stated that Director Tumlin's letter was a fountain of misinformation. He further stated that the Charter allowed for appeals to the BOA and that the City Attorney had a conflict of interest in saying otherwise. He stated that taking away a medallion from a disabled driver was a violation of the ADA.

Evelyn Engel thanked the Board for the time and attention given to the taxi appeals. She stated that she looked forward to the time when the right to appeal to the BOA was restored.

Barry Taranto stated that he could not have asked for better comments or more sensitive and intelligent comments than those provided by the commissioners. He further apologized to Julie Rosenberg. He stated that he had a deep respect for the BOA and the work and effort that they put into deciding the cases.

Evelyn Poquez stated that when the City was in dire need of revenue, they sold medallions to gullible drivers who scraped everything they had after being painted a rosy picture. She stated that the SFMTA twisted the rules to suit their purposes. She further stated that the BOA was the only neutral and impartial agency to address the taxi drivers' grievances. She urged the commissioners to not allow the SFMTA to take away their due process rights.

Marc Gruberg thanked the Board for its comments and concerns about this matter. He stated that it was a callous decision on the part of the SFMTA. He stated that the SFMTA did not like the Board's decisions and wanted to cut them out of the process. He further stated that the SFMTA's excuse that the BOA hearings were inconvenient, in terms of their staffing levels, did not have merit given that, in previous years, there were many more taxi appeals going to the BOA with a much smaller staff to handle them. He stated that the other excuse given was the ability to have permit

harmonization and that no other permit at the SFMTA had a second level of review beyond the SFMTA Hearing Section. Mr. Gruberg stated that this statement was patently false.

Dennis Korkos stated that Mr. Tumlin made it clear that if something was not in the Transportation Code, it could not be considered by the hearing officers. That is why he believed the taxi industry needed to have appeal rights to the BOA. He stated that the vote taken at the SFMTA was not legal.

ADJOURNMENT.

There being no further business, President Swig adjourned the meeting at 9:03 p.m.

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

<https://sf.gov/meeting/april-26-2023/board-appeals-hearing-april-26-2023>

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

https://sanfrancisco.granicus.com/player/clip/43531?view_id=6&redirect=true&h=a52cd49aeb29ee68fb7ce43dcbff1563