

BOARD OF APPEALS

CITY & COUNTY OF SAN FRANCISCO

MEETING MINUTES – WEDNESDAY, MAY 11, 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 Ann Lazarus, Commissioner Tina Chang and Commissioner Jose Lopez.

Brad Russi, Deputy City Attorney, Office of the City Attorney (CAT); Zachary Porianda, Deputy City Attorney, CAT; Henry Lifton, Deputy City Attorney, CAT (representing the Department of Public Health (DPH)); Tina Tam, Deputy Zoning Administrator, Planning Department (PD); Matthew Greene, Senior Building Inspector, Department of Building Inspection (DBI); Phillip Cranna, Enforcement and Legal Affairs Manager, San Francisco Municipal Transportation Agency Taxis, Access & Mobility Services (SFMTA); Chris Buck, Urban Forester, San Francisco Public Works, Bureau of Urban Forestry (SFPW-BUF); Leoncio Palacios, San Francisco Public Works, Bureau of Street Use and Mapping (SFPW-BSM); Jen Callewaert, Principal Environmental Health Inspector, DPH; Janine Young, Senior Health Inspector, DPH; Julie Rosenberg, Executive Director; Alec Longaway, Legal Assistant.

(1) SPECIAL ITEM

Consideration and possible adoption of a resolution which makes findings to allow teleconferenced meetings under California Government Code Section 54953(e).

ACTION: Upon motion by President Swig, the Board voted 4-0 to adopt the resolution.

PUBLIC COMMENT: None.

(2) 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 spoke about former Commissioner Darryl Honda. He stated that it was very rare to find a city commissioner with such an enthusiastic and ebullient personality. He noted that Commissioner Honda was always very thorough and conscientious. He further applauded him for the compassion and support he showed disabled taxi medallion holders. Dirk Neyhart asked which taxi cases were on the Board's agenda.

(3) COMMISSIONER COMMENTS & QUESTIONS

SPEAKERS: President Swig recognized former Commissioner Darryl Honda for his long and admirable service to the Board. He noted that Mr. Honda's dedication, compassion, and attendance record were extraordinary. He stated that everyone who served with him appreciated his efforts and energy. He further stated that the Board would miss him and thanked him for his service. Commissioner Chang, Commissioner Lopez and Vice President Lazarus echoed President Swig's comments.

PUBLIC COMMENT: None.

(4) ADOPTION OF MINUTES

Discussion and possible adoption of the April 20, 2022 minutes.

ACTION: Upon motion by Commissioner Lopez, the Board voted 4-0 to adopt the April 20, 2022 meeting minutes.

PUBLIC COMMENT: None.

(5) REHEARING REQUEST FOR APPEAL NO. 22-013

<p>Subject property at 436 Eureka Street. Susy Chen, Appellant, is requesting a rehearing of Appeal No. 22-013, SUSY CHEN vs. DEPT. OF BUILDING INSPECTION, PLANNING DEPT. APPROVAL, decided April 13, 2022. At that time, upon motion by Commissioner Honda, the Board voted 4-0-1 (President Swig absent) to grant the appeal and issue the permit on the condition it be revised to require the adoption of the revised plans which are in Exhibit 9 of the permit holder's brief. This motion was made on the basis that the revised plans are code compliant and address some of the appellant's concerns. Permit Holder: Steve Martisauskas. Permit Description: Horizontal expansion at rear of all levels; new interior stairs to connect all levels; remodel and reconfigure interior walls throughout per plans; excavate and expand existing garage; new doors and windows per elevations, two new bedrooms and two new bathrooms; in ground hot tub location in rear yard; remodel kitchen. Permit No.: 2018/10/09/2526.</p>
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ACTION: Upon motion by Commissioner Lopez, the Board voted 4-0 to deny the request on the basis that there was neither new information nor manifest injustice.

SPEAKERS: Ryan Patterson, attorney for requestor; Alice Barkley, attorney for permit holder; Tina Tam, PD; Matthew Greene, DBI

PUBLIC COMMENT: Michael Haye, Alireza Shojaei and Christine spoke in support of the requestor.

(6) JURISDICTION REQUEST NO. JR-22-5

Subject property at 757 3rd Avenue. Letter from Harold Nathan, requestor, asking that the Board take jurisdiction over Site Permit No. 2018/12/19/8795, which was issued on May 7, 2021. The appeal period ended on May 24, 2021, and the jurisdiction request was filed at the Board office on April 11, 2022. **Permit Holder:** Vera Cort . **Permit Description:** horizontal addition at rear yard, two stories and basement; one bathroom and two open living areas.

ACTION: Upon motion by Vice President Lazarus, the Board voted 4-0 to deny the request on the basis that the City did not intentionally or inadvertently cause the requestor to be late in filing the appeal.

SPEAKERS: Milena Gross, agent for requestor; Daniel Paris, agent for permit holder; Tina Tam, PD; Matthew Greene, DBI.

PUBLIC COMMENT: None.

(7) APPEAL NO. 21-064

<p>GEORGE HORBAL, Appellant(s)</p> <p>vs.</p> <p>MUNICIPAL TRANSPORTATION AGENCY, Respondent</p>	<p>Appealing the ISSUANCE, on July 9, 2021, of the Decision on Reconsideration: SFMTA v. George Horbal (REVOCATION of Taxi Medallion No. 1303: George Horbal does not have a current California driver's license and is not eligible to possess an A-Card. Without these licenses, the taxi medallion can be revoked pursuant to the Transportation Code. The Notice of Nonrenewal issued by SFMTA Taxi Services is upheld and the medallion is revoked). FOR FURTHER CONSIDERATION.</p> <p>Note: On September 1, 2021, upon motion by Commissioner Lopez, the Board voted 4-1 (Commissioner Lazarus dissented) to continue this Item to November 17, 2021 so that the SFMTA could provide data on medallions that were revoked on the grounds that the medallion holder did not possess a current CA driver's license or A-Card; the Board requested that the SFMTA provide data, if possible, back to 1978, but if not possible, then at a minimum since the records were made electronic. On November 17, 2021, upon motion by President Honda, the Board voted 3-1-1 (Commissioner Lazarus dissented and Vice President Swig absent) to grant the appeal and overturn the SFMTA Hearing Officer's Decision on Reconsideration, on the basis that there was not an adequate basis for the revocation of the taxi medallion. Lacking the four votes needed to pass, the motion failed. Upon motion by President Honda, the Board voted 4-0-1 (Vice President Swig absent) to continue this matter to February 16, 2022, so that: (1) Vice President Swig could participate in the vote, and (2) the parties could provide additional information to the Board on the three taxi medallion revocation cases cited in the appellant's brief which were heard by the Board in 2003. February 16, 2022: Upon motion by President Swig, the Board voted 2-3 (Commissioner Lopez, Commissioner Honda and Commissioner Change dissented) to deny the appeal and uphold the determination on the basis that it was properly issued. Lacking the three votes needed to pass the motion failed. Upon motion by Commissioner Honda, the Board voted 3-2 (President Swig and Vice President Lazarus dissented) to continue this matter to the Call of the Chair. On March 17, 2022, President Swig recalled this Item from the Call of the Chair and put it on the May 11, 2022 calendar.</p>
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ACTION: Upon motion by President Swig, the Board voted 2-2 (Commissioner Lopez and Commissioner Chang dissented) to deny the appeal and uphold the SFMTA Hearing Officer's Decision on the basis that it was properly issued because Mr. Horbal does not have a California Driver's License or an A-Card. Lacking the three votes needed to pass, the motion failed.

Upon motion by Commissioner Chang, the Board voted 2-2 (President Swig and Vice President Lazarus dissented) to grant the appeal and overturn the SFMTA's Hearing Officer's Decision on the basis that Mr. Horbal relied on representations from SFMTA staff members that an A-Card was not required in order to maintain the medallion. Lacking the three votes needed to pass, the motion failed.

Upon motion by Commissioner Lopez, the Board voted 4-0 to continue this matter to November 16, 2022, on the basis that there could be a change in conditions that would affect the value of the medallion. More specifically there could be a change in legislation, policy or collaboration between taxis and ride sharing services, which might add value to the medallion.

SPEAKERS: Carl Macmurdo, agent for appellant; George Horbal, appellant; Philip Cranna, SFMTA.

PUBLIC COMMENT: Michael Nulty, Marcelo Fonseca and Evelyn Poquez spoke in support of the appellant.

(8) APPEAL NO. 21-069

<p>JAMES CORTESOS, Appellant(s)</p> <p>vs.</p> <p>MUNICIPAL TRANSPORTATION AGENCY, Respondent</p>	<p>Appealing the ISSUANCE on July 22, 2021, of the Reconsideration of Statement of Decision: SFMTA v. James Cortesos (REVOCATION of Medallion No. 753: James Cortesos does not have a current California driver's license and is not eligible to possess an A-Card. Without these licenses, the taxi medallion can be revoked pursuant to the Transportation Code. The Notice of Nonrenewal issued by SFMTA Taxi Services is upheld and the medallion is revoked).</p> <p>MEDALLION NO. 753.</p> <p>FOR HEARING TODAY.</p> <p>Note: On November 17, 2021, upon motion by President Honda, the Board voted 4-0-1 (Vice President Swig absent) to continue this matter to February 16, 2022, upon the request and with the consent of the parties and with good cause shown, more specifically so that Vice President Swig could participate in the vote and so that the parties could provide additional information to the Board on the three 2003 taxi medallion revocation cases cited in the brief submitted by Mr. Horbal for Appeal No. 21-064 which were heard by the Board in 2003. February 16, 2022: Upon motion by Commissioner Honda, the Board voted 3-2 (Vice President Lazarus and President Swig dissented) to continue this matter to the Call of the Chair. On March 17, 2022, President Swig recalled this Item from the Call of the Chair and put it on the May 11, 2022 calendar.</p>
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ACTION: Upon motion by Commissioner Chang, the Board voted 3-1 (Vice President Lazarus dissented) to continue this matter to November 16, 2022, on the basis there could be a change in conditions that would affect the value of the medallion. More specifically there could be a change in legislation, policy or collaboration between taxis and ride sharing services, which might add value to the medallion.

SPEAKERS: Carl Macmurdo, agent for appellant; Philip Cranna, SFMTA.

PUBLIC COMMENT: Marcelo Fonseca, Dirk Neyhart, Michael Nulty and Evelyn Poquez spoke in support of the appellant.

(9) APPEAL NO. 22-019

CAROLYN GHIORZO, Appellant(s) vs. SAN FRANCISCO PUBLIC WORKS, BUREAU OF STREET USE & MAPPING, Respondent	459 Somerset Street. Appealing the ISSUANCE on March 14, 2022, to GTE Mobilnet of California, LP, of a Wireless Box Permit (installation of a Personal Wireless Service Facility in a Zoning Protected Location). PERMIT NO. 21WR-00109. FOR HEARING TODAY.
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ACTION: Upon motion by Commissioner Chang, the Board voted 4-0 to deny the appeal and uphold the permit on the basis that it was properly issued.

SPEAKERS: Melanie Sengupta, attorney for permit holder; Raj Mathur, agent for permit holder; Leo Palacios, SFPW-BSM; Tina Tam, PD.

PUBLIC COMMENT: None.

(10) APPEAL NO. 22-020

TOBACCO BARN, Appellant(s) vs. DEPT. OF PUBLIC HEALTH, Respondent	733 Polk Street. Appealing the issuance on March 8, 2022, of a DPH Director's Hearing Order (Suspension of Retail Tobacco Permit No. T-75812 for thirty- five days due to the sale of tobacco to minors). DPH Hearing Case Number SMK-22-01. FOR HEARING TODAY.
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ACTION: Upon motion by President Swig, the Board voted 4-0 to deny the appeal and uphold the determination on the basis that it was properly issued because the suspension was authorized under the Department of Public Health's Rules.

SPEAKERS: Rashid Aboud, agent for appellant; Henry Lifton, CAT; Janine Young, DPH.

PUBLIC COMMENT: Michael Nulty spoke in support of the Department.

(11) APPEAL NO. 22-023

JOHN NULTY, Appellant(s) vs. SAN FRANCISCO PUBLIC WORKS, BUREAU OF URBAN FORESTRY, Respondent	234 Myrtle Street. Appealing the issuance on March 22, 2022, of Public Works Order No. 206262 (approval to remove five trees along Myrtle Street without replacement. The trees exhibit extensive damage and overall are in poor condition) ORDER NO. 206262. FOR HEARING TODAY.
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ACTION: Upon motion by Commissioner Chang, the Board voted 4-0 to deny the appeal and uphold the order on the basis that it was properly issued.

SPEAKERS: John Nulty, appellant; Andrew Prindle, agent for determination holder; David Fletcher, agent for determination holder; Chris Buck, BUF.

PUBLIC COMMENT: W.O. Duffy, Michael Nulty and Lance Carnes spoke in support of the appellant.

ADJOURNMENT.

There being no further business, Vice President Lazarus adjourned the meeting at 8:04 p.m.

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

<https://sfgov.org/bdappeal/meeting/board-appeals-may-11-2022-supporting-documents>

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

https://sanfrancisco.granicus.com/player/clip/41255?view_id=6&redirect=true