

# BOARD OF APPEALS

## CITY & COUNTY OF SAN FRANCISCO

### DRAFT MEETING MINUTES - WEDNESDAY, SEPTEMBER 2, 2020 REMOTE MEETING VIA ZOOM

PRESENT: President Ann Lazarus, Vice President Darryl Honda, Commissioner Rick Swig, Commissioner Eduardo Santacana and Commissioner Rachael Tanner.

Brad Russi, Deputy City Attorney, Office of the City Attorney (CAT); Scott Sanchez, Deputy Zoning Administrator, Planning Department (PD); Joseph Duffy, Acting Chief Building Inspector, Department of Building Inspection (DBI); Carla Short, Superintendent, San Francisco Public Works, Bureau of Urban Forestry (SFPW-BUF); Chris Buck, Urban Forester, SFPW-BUF; Julie Rosenberg, Executive Director; Alec Longaway, Legal Process Clerk; Katy Sullivan, 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: Joshua Klipp corrected a statement he made at the August 19, 2020 hearing regarding the trees planted at 1100 Connecticut Street as part of the Potrero Phase I project. At that hearing, Mr. Klipp stated that he believed the trees would likely not grow taller than 20 feet or live more than 35 years. Mr. Klipp stated that he had returned to the site and confirmed that the newly planted trees are olives and Tristanias and that they might make it over 20 feet for their remaining years. Mr. Klipp further stated that earlier in the year he fought to preserve the trees slated for removal at 645 5<sup>th</sup> Street and that the primary tenant slated to lease half a million square feet at the location pulled out of the deal because employees can work from home. He stated that while the trees will still come down, it remains to be seen whether the building will reach its intended usefulness. Mr. Klipp described his hopes that in the future, there can be a more robust discussion on development that looks not only at the bottom line for those that stand to profit in the short-term, but those who have to live with the consequences in the long term.

Zach Karnazes stated that the Bureau of Urban Forestry and Department of Public Works are incredibly corrupt and have been deforesting a lot of the city, especially during COVID-19. He described the acceleration of tree removals, including trees that are currently on appeal which he believes is problematic and illegal. Mr. Karnazes further stated that they get a slap on the wrist fine and they will save money by breaking the law and deforesting trees during an appeals process because it is more profitable for them to do what is illegal. He noted that the tiny penalties in place are unacceptable and the fact that there is a presentation by BUF and the Department of Public Works on their own crimes is the most ridiculous conflict of interest. Mr. Karnazes described how it is up to the public and the Board to demand heftier fines for breaking the law in these multiple incidents. He concluded by stating the importance of trees, especially during this time of wildfires poisoning the air and COVID-19. He stated that the Board has approved much of BUF's illegal activity including the illegal tree removal at 1501 Quint Street.

(2) **COMMISSIONER COMMENTS & QUESTIONS**

SPEAKERS: None.

PUBLIC COMMENT: None.

(3) **ADOPTION OF MINUTES**

Discussion and possible adoption of the August 19, 2020 minutes.

ACTION: Upon motion by Commissioner Swig, the Board voted 5-0 to adopt the August 19, 2020 minutes.

PUBLIC COMMENT: Zach Karnazes thanked Julie Rosenberg for improving accessibility to the meetings and improving the meeting minutes. He stated that there was an important but small mistake at the end of the minutes that he understands is being corrected. He further stated that he believed the mistake was not intentional.

(4) **REVISION OF MINUTES**

Discussion and possible revision of the August 12, 2020 minutes to make a correction to the statement made by Zach Karnazes during Public Comment (Item 1). The proposal is to remove the last sentence: "He stated that he would only be able to present his item if it was first on the agenda."

ACTION: Upon motion by Commissioner Swig, the Board voted 5-0 to adopt the revised August 12, 2020 minutes.

PUBLIC COMMENT: Zach Karnazes clarified that the statement he made for Item 3 was intended to be for Item 4.

(5) **JURISDICTION REQUEST NO. JR-20-4**

**Subject property at 1501 Tennessee Street aka 2920 3rd Street.** Letter from El Niño Training Center, requestor, asking that the Board take jurisdiction over Notice of Violation, Complaint No. 2019-016112ENF, which was issued on July 22, 2020. The appeal period ended on August 6, 2020, and the jurisdiction request was filed at the Board office on August 14, 2020. **Determination Holder:** Terreno Tennessee Street LLC. **Determination Description:** The subject property was last authorized for warehouse use as a Wholesale Storage use, a use permitted under the PDR-1-G, Zoning District. The purpose of this district is to retain and encourage existing production, distribution, and repair activities and limit retail uses. The violation pertains to the current Gym use at the subject property which is a Retail Sales and Service Use under Planning Code Section 102. It has been reported that the above property is being used as a Gym dba El Niño without such authorization and benefit of a permit. Pursuant to Planning Code Section 210.3, a Gym Use is not permitted in a PDR-1-G Zoning District where the subject property is located. Additionally, wall and freestanding business signs have been installed illegally without the benefit of permits.

ACTION: Upon motion by Commissioner Swig, the Board voted 4-1 (Vice President Honda dissented) to deny the Jurisdiction Request on the basis that the City did not intentionally or inadvertently cause the requestor to be late in filing the appeal.

SPEAKERS: Ahmad Mohazab, agent for requestor, Gil Melendez, agent for requestor, Scott Sanchez, PD

PUBLIC COMMENT: None.

**(6) APPEAL NO. 20-051**

<p>STEPHEN WILLIAMS, Appellant(s)</p> <p>vs.</p> <p>ZONING ADMINISTRATOR, Respondent</p>	<p>1926 Divisadero Street. Appealing the ISSUANCE on July 22, 2020, to the Kastrop Group, Inc., of a Rear Yard Modification (the proposed project is to construct an approximately 166 square foot rear addition at the second floor of the two-story over basement residential building that will extend approximately one foot and four inches into the required rear yard; therefore a rear yard modification is required by Planning Code Section 134; the Zoning Administrator granted the rear yard modification upon a determination that the facts of the case meet the three requirements of Planning Code Section 134(e)). CASE NO. 2018-013422VAR. FOR HEARING TODAY.</p>
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**ACTION:** Upon motion by Vice President Honda, the Board voted 5-0 to deny the appeal and uphold the Rear Year Modification on the basis that it meets the three criteria required under Planning Code Section 134(h).

**SPEAKERS:** Stephen Williams, appellant; Lothar Determann, determination holder; Brian Villavicencio, agent for determination holders; Irina Shestakova, determination holder; Scott Sanchez, PD.

PUBLIC COMMENT: None.

**(7) SPECIAL ITEM:**

Discussion and possible action regarding presentation by representatives from San Francisco Public Works, Bureau of Urban Forestry, on the fines imposed for illegal tree removal. The presentation will include the legal authority and amount for the fines, the process for imposing fines once Public Works is made aware of illegal tree removal, and the process for changing the fine amounts. Additionally, the Bureau of Urban Forestry will discuss other legal remedies available for illegal tree removal.

**ACTION:** Upon motion by Vice President Honda, the Board voted 5-0 to continue the Item to December 16, 2020 with the expectation that Public Works report back on the following items addressed by the Commissioners: (1) the feasibility of instituting bonds as a means of holding contractors and developers accountable, (2) the proposed amendments to the Public Works Code that were shared with members of the Board of Supervisors and the status of these proposed amendments, (3) a review of the fine structure, in general, with the goal of increasing fine amounts and the bases for increasing these amounts, and (4) the legal limitations on imposing punitive fines.

**SPEAKERS:** Chris Buck, SFPW-BUF; Carla Short, SFPW-BUF.

PUBLIC COMMENT:

Kasey Rios Asberry suggested that the appraisal process be evaluated to account for the ecosystem services, the sense of place, the cultural impact, and the services the trees would have provided if allowed to live out their lives. She agreed with Commissioner Honda that the canopy needs to be preserved and the number of trees increased. Ms. Asberry applauded the Board for having the hearing.

Joshua Klipp thanked President Lazarus for putting this item on the agenda and the Commissioners for their thoughtful comments and questions. Regarding criminal penalties, Mr. Klipp stated that he believed it was unlikely that the City would continue to engage contractors or developers that had committed criminal acts, and therefore the stakes were higher than just the \$500 criminal fine. He stated that the City should not be providing any cover for contractors who are doing unpermitted work. Regarding the fines for the value of the tree, Mr. Klipp stated that one of the amendments he had proposed to Article 16 was to require a contractor to post a bond so that if they hurt or remove a tree, the funds would go straight to the tree planting fund. Mr. Klipp stated that he had additionally proposed a Biomass replacement formula to account for the environmental losses.

Danny Smith described how there is little deterrence for illegal tree removal if it simply involves a fine. He stated that valuing trees beyond their replacement cost is important especially considering the decades it takes for a tree to grow. He described the recent removal of three trees in his neighborhood which he believed were healthy.

Deetje Boler stated that trees are living beings and putting a price value on killing the tree is not capturing the actual loss of the tree, or the loss to the environment. Ms. Boler suggested criminal penalties instead of fines and perhaps a moratorium on tree removals altogether.

### **ADJOURNMENT**

There being no further business, President Lazarus adjourned the meeting at 7:56 p.m.

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

<https://sfgov.org/bdappeal/meeting/board-appeals-september-2-2020-supporting-documents>

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

[https://sanfrancisco.granicus.com/MediaPlayer.php?view\\_id=6&clip\\_id=36539](https://sanfrancisco.granicus.com/MediaPlayer.php?view_id=6&clip_id=36539)