

File No. 16119

Item No. 7

SUNSHINE ORDINANCE TASK FORCE
AGENDA PACKET CONTENTS LIST

Complaint Committee Date: January 24, 2017

- Memorandum - Deputy City Attorney
- Complaint and Supporting documents
- Respondent's Response
- Order of Determination
- Minutes
- Correspondence
- Committee Recommendation/Referral
-
-
-
-
- No Attachments

OTHER

- Administrator's Report
- _____
- _____
- Public Correspondence
- _____

Completed by: V. Young Date 01/19/17

*An asterisked item represents the cover sheet to a document that exceeds 25 pages.
The complete document is in the file.

SUNSHINE ORDINANCE COMPLAINT

Complaint against which Department or Commission: Planning Department

Name of individual contacted at Department or Commission: Planner Sara Velve and Planner Andrew Perry

Alleged violation public records access

Alleged violation of public meeting. Date of meeting _____

Sunshine Ordinance Section: 67.21, 67.24, 67.25, 67.26
(If known, please cite specific provision being violated)

RECEIVED
PLANNING DEPARTMENT
2016 DEC 29 AM 10:24
BY: [Signature]

Please describe alleged violation. Use additional paper if needed. Please attach any relevant documentation supporting your complaint.

On 12/21/2016 I made a Sunshine Immediate Disclosure Request and gave Respondents to respond no later than December 23, 2016. **(Exh. A)**

On 12/23/2016 Respondents failed to respond. **(Exh. B)**

On 12/28/2016 Respondents sent me an email claiming that they provided all responsive records and no additional records for me BUT the fact is Respondents **failed to produce a single piece of public record** to my Sunshine Immediate Disclosure Request. **(Exh. C)**

Do you wish a public hearing before the Sunshine Ordinance Task Force? yes no.

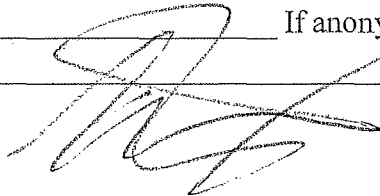
(Optional)

Your name Ellen Tsang

Address tsangt123@yahoo.com Date 12/29/2016

Telephone _____ If anonymous, please let us know how to contact you.

Signature _____



Exh. A

Subject: Sunshine Immediate Disclosures Request December 21, 2016
From: Ellen Tsang (tsangt123@yahoo.com)
To: cpc-recordrequest@sfgov.org; pic@sfgov.org; Sara.Vellve@sfgov.org;
Cc: tsangt123@yahoo.com;
Date: Wednesday, December 21, 2016 8:44 PM

Immediate Disclosure Request

Wednesday December 21, 2016

Re: Planning Department's Memorandum dated December 14, 2006 issued by Lawrence Badiner, Prior Zoning Administrator (no longer worked for the City of San Francisco) and planner Sara Vellve, property address at 2650 Hyde Street

Please provide the public record as following:

- 1) "Ms. Tsang filed DR on a previous permit that was cancelled";
- 2) this "previous permit" application number and the name of the permit applicant;
- 3) the name of the person who cancelled this permit and the date this "previous permit that was cancelled";
- 4) the DR number for this "previous permit";
- 5) the date that Planning transferred "her DR request to the current proposal";
- 6) the new transferred DR number.
- 7) the permit number for the new transferred DR.
- 8) the date and time the new transferred DR public hearing was held;
- 9) the Decision of this new transferred DR if the DR public hearing was in fact held.

I would request the response in electronic format, to this email address. If there is any reason for delay, this request should receive a response on a "rolling basis," as required by the Sunshine Ordinance.

As this is an IDR, I would expect a response no later than close of business on **Friday, December 23, 2016**

Please respond and identify the document by numbered requests.

Thank you.

Exh. B

12/28/2016

Print

Subject: Re: Sunshine Immediate Disclosures Request December 21, 2016
From: Ellen Tsang (tsangt123@yahoo.com)
To: cpc-recordrequest@sfgov.org; pic@sfgov.org; Sara.Vellve@sfgov.org;
Cc: tsangt123@yahoo.com;
Date: Friday, December 23, 2016 5:30 PM

CPC-RecordRequest, PIC PLN (CPC) and Planner Sara Vellve:

Today December 23, 2016, you failed to response to my Immediate Disclosure Request dated December 21, 2016. (see below)

If you need additional time to respond, please let me know before I file a Sunshine Complaint.

Thank you.

Ellen Tsang

From: Ellen Tsang <tsangt123@yahoo.com>
To: Ellen Tsang <tsangt123@yahoo.com>; CPC-RecordRequest <cpc-recordrequest@sfgov.org>; PIC PLN (CPC) <pic@sfgov.org>; "Sara.Vellve@sfgov.org" <Sara.Vellve@sfgov.org>
Sent: Friday, December 23, 2016 5:28 PM
Subject: Re: Sunshine Immediate Disclosures Request December 21, 2016

CPC-RecordRequest, PIC PLN (CPC) and Planner Sara Vellve:

Today December 23, 2016, you failed to response to my Immediate Disclosure Request dated December 21, 2016. (see below)

If you need additional time to respond, please let me know before I file a Sunshine Complaint.

Thank you.

Ellen Tsang

From: Ellen Tsang <tsangt123@yahoo.com>
To: CPC-RecordRequest <cpc-recordrequest@sfgov.org>; PIC PLN (CPC) <pic@sfgov.org>; "Sara.Vellve@sfgov.org" <Sara.Vellve@sfgov.org>
Cc: Ellen Tsang <tsangt123@yahoo.com>
Sent: Wednesday, December 21, 2016 8:43 PM
Subject: Sunshine Immediate Disclosures Request December 21, 2016

Immediate Disclosure Request

Wednesday December 21, 2016

Re: Planning Department's Memorandum dated December 14, 2006 issued by Lawrence Badiner, Prior Zoning Administrator (no longer worked for the City of San Francisco) and planner Sara Vellve, property address at 2650 Hyde Street

Please provide the public record as following:

- 1) "Ms. Tsang filed DR on a previous permit that was cancelled";
- 2) this "previous permit" application number and the name of the permit applicant;
- 3) the name of the person who cancelled this permit and the date this "previous permit that was cancelled";
- 4) the DR number for this "previous permit";
- 5) the date that Planning transferred "her DR request to the current proposal";
- 6) the new transferred DR number.
- 7) the permit number for the new transferred DR.
- 8) the date and time the new transferred DR public hearing was held;
- 9) the Decision of this new transferred DR if the DR public hearing was in fact held.

I would request the response in electronic format, to this email address. If there is any reason for delay, this request should receive a response on a "rolling basis," as required by the Sunshine Ordinance.

Exh. C

Subject: RE: Sunshine Immediate Disclosures Request December 21, 2016
From: CPC-RecordRequest (CPC-RecordRequest@sfgov.org)
To: tsangt123@yahoo.com; CPC-RecordRequest@sfgov.org; pic@sfgov.org; john.rahaim@sfgov.org; scott.sanchez@sfgov.org; andrew.perry@sfgov.org; sara.vellve@sfgov.org;
Cc: jeff.joslin@sfgov.org;
Date: Wednesday, December 28, 2016 4:42 PM

Ms. Tsang,

Although Mr. Perry was not the planner assigned to the project in 2005-2006, he is assigned to the current project, is up-to-speed and more than capable of answering your questions.

At this time we believe we've provided you all responsive records. We have no additional records for you. Should you have any future records requests, please direct them to cpc-recordrequest@sfgov.org.

Record Requests

Main: 415-558-3678 | **Fax:** 415-558-6409



1650 Mission Street, Suite 400
San Francisco, CA 94103

SF Planning Department

[Hours of Operation](#) | [Property Information Map](#) | [Record Requests](#)



From: Ellen Tsang [mailto:tsangt123@yahoo.com]
Sent: Tuesday, December 27, 2016 7:47 PM
To: CPC-RecordRequest; PIC, PLN (CPC); Rahaim, John (CPC); Sanchez, Scott (CPC); Perry, Andrew (CPC); Vellve, Sara (CPC)
Cc: Ellen Tsang
Subject: Re: Sunshine Immediate Disclosures Request December 21, 2016

Dear Planning Director John Rahaim, Zoning Administrator Scott Sanchez, CPC-RecordRequest, PIC PLN (CPC), Planner Andrew Perry and Planner Sara Vellve:

Subject: Re: Sunshine Immediate Disclosures Request December 21, 2016

From: Ellen Tsang (tsangt123@yahoo.com)

To: CPC-RecordRequest@sfgov.org; pic@sfgov.org; john.rahaim@sfgov.org; scott.sanchez@sfgov.org; andrew.perry@sfgov.org; sara.vellve@sfgov.org;

Cc: tsangt123@yahoo.com;

Date: Tuesday, December 27, 2016 7:46 PM

Dear Planning Director John Rahaim, Zoning Administrator Scott Sanchez, CPC-RecordRequest, PIC PLN (CPC), Planner Andrew Perry and Planner Sara Vellve:

CPC-RecordRequest just sent me an email today requesting to invoke extension to 10 days. Planner Andrew Perry stated that he was unclear what public record I was requesting but answered my Sunshine Request that was not addressed nor cc to him. Planner was not the planner who was involved in 2005-2006 2650 Hyde Street projects nor Planner Perry was the authors who sent me the 2006 Planning Memorandum. Planner Perry did not have personal knowledge of the projects in 2005-2006 at 2650 Hyde Street. Today immediately after CPC-RecordRequest was invoking extension to 10 days, Planner Perry responded to my Sunshine Requests dated December 21, 2016.

I request that CPC-RecordRequest should send me an email to clarify the confusion by confirming that CPC-RecordRequest is no longer invoking 10 days extension and CPC-RecordRequest is now authorized Planner Andrew Perry to represent CPC-RecordRequest to respond to my Sunshine Requests.

The public records that I requested were quoted from the Memorandum which proved that Planning and the planner Sara Vellve have had these public records. However, Planning Perry stated that he was "unclear what public record you are requesting here." and "It is possible " " It is unclear ..."

Since Planner Perry was not the author of the Memorandum and one of the Author Planner Sara Vellve is still working for Planning, Planner Sara Vellve should have personal knowledge and should be able to produce and identify the public records requested.

Please provide and identify the documents requested. Planner Perry failed to produce a single document. ↙
If Planning continue refusing to provide documents requested I will be forced to file a Sunshine Complaint at once.

Also, CPC-RecordRequest, PIC PLN (CPC) should inform me if they have authorized Planner Andrew Perry to represent them to respond to all my Sunshine Requests moving forward regardless if Planner Perry has personal knowledge and/or documents to my requests.

Thank you.

Ellen Tang

From: "Perry, Andrew (CPC)" <andrew.perry@sfgov.org>
To: Ellen Tsang <tsangt123@yahoo.com>; CPC-RecordRequest <CPC-RecordRequest@sfgov.org>; "Vellve, Sara (CPC)" <sara.vellve@sfgov.org>
Sent: Tuesday, December 27, 2016 6:21 PM
Subject: RE: Sunshine Immediate Disclosures Request December 21, 2016

**Sunshine Ordinance Task Force
Complaint Summary**

File No. 16119

Ellen Tsang V. John Rahaim and the Planning Department

Date filed with SOTF: 12/29/2016

Contacts information:

Tsangt123@yahoo.com (Complainant)

Christine Silva, Jonas Ionin, John Rahaim, Sara Velve, Andrew Perry (Planning Department)

File No. 16119: Complaint filed by Ellen Tsang against Director John Rahaim and the Planning Department, for allegedly violating Administrative Code (Sunshine Ordinance), Sections 67.21, 67.24, 67.25, and 67.26, by failing to respond to an Immediate Disclosure Request in a timely and/or complete manner.

Date public record was requested by Complainant: December 21, 2016

Date of Response: Possible December 27 and December 28, 2016

Administrative Summary if applicable:

Complaint attached.

On December 27, 2016, it appears that the Planning Department submitted a response to Ms. Tsang's request. However, the Task Force has only received page 1 of 5 and cannot determine if there were attachments. Please provide a complete copy of the Planning Department's response along with any attachments.



DENNIS J. HERRERA
City Attorney

NICHOLAS COLLA
Deputy City Attorney

Direct Dial: (415) 554-3819
Email: nicholas.colla@sfgov.org

MEMORANDUM

TO: Sunshine Ordinance Task Force
FROM: Nicholas Colla
Deputy City Attorney
DATE: January 18, 2017
RE: Complaint No. 16119 – Tsang v. John Rahaim of the San Francisco Planning Department

COMPLAINT

Complainant Ellen Tsang (“Complainant”) alleges that John Rahaim (“Mr. Rahaim”) of the San Francisco Planning Department (“Planning”) violated public records laws by failing to respond to Complainant’s Immediate Disclosure Request (“IDR”).

COMPLAINANT FILES COMPLAINT

On December 29, 2016, Complainant filed a complaint with the Task Force regarding Planning’s alleged failure to respond to Complainant’s IDR in a timely manner.

JURISDICTION

The San Francisco Planning Department is a department subject to the provisions of the Sunshine Ordinance and the California Public Records Act (“CPRA”) regarding records requests. Respondent does not contest jurisdiction to hear this complaint.

APPLICABLE STATUTORY SECTION(S)

Section 67 of the San Francisco Administrative Code:

- Section 67.21(b) provides the timeframe for complying with public records requests.
- Section 67.25(a) governs the timeframe for responding to immediate disclosure requests (“IDRs”).
- Section 67.26 governs withholding of records.
- Section 67.27 governs written justification for withholding of records.

Section 6253 of the Cal. Govt. Code (CPRA)

- Section 6253(c) governs the timeframe in which general requests for public documents must be honored.

APPLICABLE CASE LAW

- None

MEMORANDUM

TO: Sunshine Ordinance Task Force
DATE: January 18, 2017
PAGE: 2
RE: Complaint No. 16119 – Tsang v. John Rahaim of the San Francisco Planning Department

BACKGROUND

Complainant alleges that on dates ranging from December 21, 2016, she emailed an IDR to Planning at cpc-recordrequest@sfgov.org in which she requested the following:

- 1) “Ms. Tsang filed DR on a previous permit that was cancelled”;
- 2) this “previous permit” application number and the name of the permit applicant;
- 3) the name of the person who cancelled this permit and the date this “previous permit that was cancelled”;
- 4) the DR number for this “previous permit”;
- 5) the date that Planning transferred “her DR request to the current proposal”;
- 6) the new transferred DR number;
- 7) the permit number for the new transferred DR;
- 8) the date and time the new transferred DR public hearing was held;
- 9) the Decision of this new transferred DR if the DR public hearing process was in fact held.

According to the documents submitted by Complainant in support of her complaint, it appears that she did not get a response to her December 21, 2016 IDR until Planning emailed her on December 27, 2016 to invoke a 10 extension to respond to the request. As of July 30, 2014, I have not received a response to this complaint from Planning.

On December 28, 2016, Complainant allegedly received an email from cpc-recordrequest@sfgov.org in which the sender stated that all responsive records had already been provided to Complainant.

On December 29, 2016, Complainant filed this complaint with the Task Force in which she alleged that Planning never provided her with a single record responsive to her request.

It does not appear that Planning has submitted a response to this complaint.

QUESTIONS THAT MIGHT ASSIST IN DETERMINING FACTS

- Does Planning dispute Complainant’s allegation that it failed to respond to her IDR?

LEGAL ISSUES/LEGAL DETERMINATIONS

- Did Complainant follow the procedure required under Administrative Code Section 67.25(a) to successfully make an IDR?
- Did Planning violate Administrative Code Section 67.25(a) by allegedly failing to satisfy Complainant’s IDR?

MEMORANDUM

TO: Sunshine Ordinance Task Force
DATE: January 18, 2017
PAGE: 3
RE: Complaint No. 16119 – Tsang v. John Rahaim of the San Francisco Planning Department

- Did Planning violate Administrative Code Section 67.21(b) and CPRA Section 6253(c) by allegedly failing to satisfy Complainant's December 21, 2016 IDR?

CONCLUSION

THE TASK FORCE FINDS THE FOLLOWING FACTS TO BE TRUE:

THE TASK FORCE FINDS THE ALLEGED VIOLATIONS TO BE **TRUE OR NOT TRUE.**

* * *

MEMORANDUM

TO: Sunshine Ordinance Task Force
DATE: January 18, 2017
PAGE: 4
RE: Complaint No. 16119 – Tsang v. John Rahaim of the San Francisco Planning Department

CHAPTER 67, SAN FRANCISCO ADMINISTRATIVE CODE (SUNSHINE ORDINANCE)**SEC. 67.21. PROCESS FOR GAINING ACCESS TO PUBLIC RECORDS; ADMINISTRATIVE APPEALS.**

(b) *A custodian of a public record shall, as soon as possible and within ten days following receipt of a request for inspection or copy of a public record, comply with such request. Such request may be delivered to the office of the custodian by the requester orally or in writing by fax, postal delivery, or e-mail. If the custodian believes the record or information requested is not a public record or is exempt, the custodian shall justify withholding any record by demonstrating, in writing as soon as possible and within ten days following receipt of a request, that the record in question is exempt under express provisions of this ordinance.*

SEC. 67.25. IMMEDIACY OF RESPONSE

(a) Notwithstanding the 10-day period for response to a request permitted in Government Code Section 6256 and in this Article, *a written request for information described in any category of non-exempt public information shall be satisfied no later than the close of business on the day following the day of the request. This deadline shall apply only if the words "Immediate Disclosure Request" are placed across the top of the request and on the envelope, subject line, or cover sheet in which the request is transmitted. Maximum deadlines provided in this article are appropriate for more extensive or demanding requests, but shall not be used to delay fulfilling a simple, routine or otherwise readily answerable request.*

(b) If the voluminous nature of the information requested, its location in a remote storage facility or the need to consult with another interested department warrants an extension of 10 days as provided in Government Code Section 6456.1, the requester shall be notified as required by the close of business on the business day following the request.

(c) The person seeking the information need not state his or her reason for making the request or the use to which the information will be put, and requesters shall not be routinely asked to make such a disclosure. Where a record being requested contains information most of which is exempt from disclosure under the California Public Records Act and this article, however, the City Attorney or custodian of the record may inform the requester of the nature and extent of the non-exempt information and inquire as to the requester's purpose for seeking it, in order to suggest alternative sources for the information which may involve less redaction or to otherwise prepare a response to the request.

(d) Notwithstanding any provisions of California Law or this ordinance, in response to a request for information describing any category of non-exempt public information, when so requested, the City and County shall produce any and all responsive public records as soon as reasonably possible on an incremental or "rolling" basis such that responsive records are produced as soon as possible by the end of the same business day that they are reviewed and collected. This section is intended to prohibit the withholding of public records that are responsive to a records request until all potentially responsive documents have been reviewed and collected. Failure to comply with this provision is a violation of this Article.

SEC. 67.26. WITHHOLDING OF RECORDS

MEMORANDUM

TO: Sunshine Ordinance Task Force
DATE: January 18, 2017
PAGE: 5
RE: Complaint No. 16119 – Tsang v. John Rahaim of the San Francisco Planning Department

No record shall be withheld from disclosure in its entirety unless all information contained in it is exempt from disclosure under express provisions of the California Public Records Act or of some other statute. Information that is exempt from disclosure shall be masked, deleted or otherwise segregated in order that the nonexempt portion of a requested record may be released, and keyed by footnote or other clear reference to the appropriate justification for withholding required by Section 67.27 of this Article. This work shall be done personally by the attorney or other staff member conducting the exemption review. The work of responding to a public-records request and preparing documents for disclosure shall be considered part of the regular work duties of any City employee, and no fee shall be charged to the requester to cover the personnel costs of responding to a records request.

SEC. 67.27. JUSTIFICATION OF WITHHOLDING.

Any withholding of information shall be justified, in writing, as follows:

- (a) *A withholding under a specific permissive exemption in the California Public Records Act, or elsewhere, which permissive exemption is not forbidden to be asserted by this ordinance, shall cite that authority.*
- (b) A withholding on the basis that disclosure is prohibited by law shall cite the specific statutory authority in the Public Records Act or elsewhere.
- (c) A withholding on the basis that disclosure would incur civil or criminal liability shall cite any specific statutory or case law, or any other public agency's litigation experience, supporting that position.
- (d) When a record being requested contains information, most of which is exempt from disclosure under the California Public Records Act and this Article, the custodian shall inform the requester of the nature and extent of the nonexempt information and suggest alternative sources for the information requested, if available.

CALIFORNIA PUBLIC RECORDS ACT (GOVT CODE SECTION 6250 ET SEQ.)**SECTION 6253**

(c) Each agency, upon a request for a copy of records, shall, *within 10 days from receipt of the request, determine whether the request, in whole or in part, seeks copies of disclosable public records in the possession of the agency and shall promptly notify the person making the request of the determination and the reasons therefor.* In unusual circumstances, the time limit prescribed in this section may be extended by written notice by the head of the agency or his or her designee to the person making the request, setting forth the reasons for the extension and the date on which a determination is expected to be dispatched. No notice shall specify a date that would result in an extension for more than 14 days. When the agency dispatches the determination, and if the agency determines that the request seeks disclosable public records, the agency shall state the estimated date and time when the records will be made available. As used in this section, "unusual circumstances" means the following, but only to the extent reasonably necessary to the proper processing of the particular request:

- (1) The need to search for and collect the requested records from field facilities or other establishments that are separate from the office processing the request.

MEMORANDUM

TO: Sunshine Ordinance Task Force
DATE: January 18, 2017
PAGE: 6
RE: Complaint No. 16119 – Tsang v. John Rahaim of the San Francisco Planning Department

(2) The need to search for, collect, and appropriately examine a voluminous amount of separate and distinct records that are demanded in a single request.

(3) The need for consultation, which shall be conducted with all practicable speed, with another agency having substantial interest in the determination of the request or among two or more components of the agency having substantial subject matter interest therein.

(4) The need to compile data, to write programming language or a computer program, or to construct a computer report to extract data.

Young, Victor

From: Ellen Tsang <tsangt123@yahoo.com>
Sent: Tuesday, January 17, 2017 8:25 PM
To: Silva, Christine (CPC); SOTF, (BOS); Rahaim, John (CPC); Ionin, Jonas (CPC); Vellve, Sara (CPC); Perry, Andrew (CPC)
Cc: Calvillo, Angela (BOS); Ellen Tsang
Subject: Re: SOTF - Complaint Filed with the Sunshine Ordinance Task Force - Complaint No. 16119
Attachments: Planning Memorandum to Ellen Tsang.jpg; DR #06.0396D p1.jpg; DR #06.0396D p2.jpg; DR #06.0396D p3.jpg; DR #06.0396D with attachments.pdf

Dear Mr. Young (BOS) and Ms. Silva:

Today July 17, 2017 Ms. Christine Silva (CPC) sent her response to SOTF and her claim that I/Complainant did not request for records (i.e. documents) is false.

I requested: "**Please provide the public record** as following" (see my Immediate Disclosure Request on file)

Respondents failed to produce a single document.

Planner Sara Vellve was the planner and has full knowledge of the public record requested because she was one of the author who issued the Memorandum (**see first attachment**) but she did not respond to my public record requests.

Planner Andrew Perry was not the planner re: DR #06-0396D and he sent an email without providing a single document. His creative answers were inaccurate, for example, Planner Perry made up that the "previous permit" is 2005.09.27.4018.

The DR #06-0396D was filed on February 2, 2006 which stated clearly that the DR was related to Building Permit Application # 2006.01.10.1829 not related at all to Building Permit Application # 2005.09.27.4018 as Planner Perry created. (**see Attachments**)

February 2, 2006 is only 23 days from January 10, 2006.

Again, Planner Perry's email was based on what he think was the best way to get rid off my requests for public records. His email was not based on any supporting document which I/complainant requested.

Sunshine Task Force should find violations and order Respondents to produce the responsive public records.

Thank you.

Ellen Tsang .

From: "Silva, Christine (CPC)" <christine.l.silva@sfgov.org>
To: "SOTF, (BOS)" <soft@sfgov.org>; "Rahaim, John (CPC)" <john.rahaim@sfgov.org>; "Ionin, Jonas (CPC)" <jonas.ionin@sfgov.org>; "Vellve, Sara (CPC)" <sara.vellve@sfgov.org>; "Perry, Andrew (CPC)" <andrew.perry@sfgov.org>
Cc: Ellen Tsang <tsangt123@yahoo.com>; "Calvillo, Angela (BOS)" <angela.calvillo@sfgov.org>
Sent: Tuesday, January 17, 2017 4:10 PM
Subject: RE: SOTF - Complaint Filed with the Sunshine Ordinance Task Force - Complaint No. 16119

Victor - Please see attached response.

Christine Lamorena Silva
Manager of Commission Affairs

From: SOTF, (BOS)
Sent: Monday, January 09, 2017 1:43 PM
To: Rahaim, John (CPC); Ionin, Jonas (CPC); Silva, Christine (CPC); Velve, Sara (CPC); Perry, Andrew (CPC)
Cc: Ellen Tsang; Calvillo, Angela (BOS)
Subject: SOTF - Complaint Filed with the Sunshine Ordinance Task Force - Complaint No. 16119

Good Afternoon:

The Planning Department has been named as a Respondent in the attached complaint filed with the Sunshine Ordinance Task Force. Please respond to the following complaint/request within five business days.

The Respondent is required to submit a written response to the allegations including any and all supporting documents, recordings, electronic media, etc., to the Task Force within five (5) business days of receipt of this notice. This is your opportunity to provide a full explanation to allow the Task Force to be fully informed in considering your response prior its meeting.

Please include the following information in your response if applicable:

1. List all relevant records with descriptions that have been provided pursuant to the Complainant request.
2. Date the relevant records were provided to the Complainant.
3. Description of the method used, along with any relevant search terms used, to search for the relevant records.
4. Statement/declaration that all relevant documents have been provided, does not exist, or has been excluded.
5. Copy of the original request for records (if applicable).

Please refer to the File Number when submitting any new information and/or supporting documents pertaining to this complaint.

The Complainant alleges:


File No. 16119: Complaint filed by Ellen Tsang against Director John Rahaim and the Planning Department, for allegedly violating Administrative Code (Sunshine Ordinance), Sections 67.21, 67.24, 67.25, and 67.26, by failing to respond to an Immediate Disclosure Request in a timely and/or complete manner.

Complaint Attached.

Both parties (Complainant and Respondent) **will be contacted once a hearing date is determined.** Attached is the Sunshine Ordinance Task Force's complaint procedures.

Thank you.

Victor Young
Administrator
Sunshine Ordinance Task Force
1 Dr. Carlton B. Goodlett Place, City Hall., Room 244
San Francisco CA 94102
phone 415-554-7724 | fax 415-554-5163
victor.young@sfgov.org | www.sfbos.org

 Click [here](#) to complete a Board of Supervisors Customer Service Satisfaction form.

1998. The [Legislative Research Center](#) provides 24-hour access to Board of Supervisors legislation, and archived matters since August

Disclosures: *Personal information that is provided in communications to the Board of Supervisors is subject to disclosure under the California Public Records Act and the San Francisco Sunshine Ordinance. Personal information provided will not be redacted. Members of the public are not required to provide personal identifying information when they communicate with the Board of Supervisors and its committees. All written or oral communications that members of the public submit to the Clerk's Office regarding pending legislation or hearings will be made available to all members of the public for inspection and copying. The Clerk's Office does not redact any information from these submissions. This means that personal information—including names, phone numbers, addresses and similar information that a member of the public elects to submit to the Board and its committees—may appear on the Board of Supervisors website or in other public documents that members of the public may inspect or copy.*



PLANNING DEPARTMENT

City and County of San Francisco • 1660 Mission Street, Suite 500 • San Francisco, California • 94103-2414

MAIN NUMBER (415) 558-6378	DIRECTOR'S OFFICE PHONE: 558-6411 4TH FLOOR FAX: 558-6426	ZONING ADMINISTRATOR PHONE: 558-6350 3TH FLOOR FAX: 558-6409	PLANNING INFORMATION PHONE: 558-6377 MAJOR ENVIRONMENTAL FAX: 558-5991	COMMISSION CALENDAR INFO: 558-6422 INTERNET WEB SITE SFGOV.ORG/PLANNING
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MEMORANDUM

DATE: December 14, 2006
TO: Planning Commission & Interested Parties
FROM: Lawrence Badiner, Zoning Administrator
 Sara Vellve, Northwest Quadrant

RE: **PROPERTY ADDRESS** 2650 Hyde Street
ASSESSOR'S PARCEL# Blk 0027 Lot 019
ZONING DISTRICT RH-3 / 40-X
BUILDING PERMIT NO. 2006.10.18.5315
CASE NO. 2006.0396D

Pre-Application vs. 311 Notification

- The proposal does not require pre-app. notification because the 10' horizontal depth and 7' vertical height thresholds are not met.
- Although the height of elevator penthouse exceeds 7', it is not considered in the calculation of a building's overall height and is excluded from the pre-app. process.
- The Department suggested to the project sponsor that it would be wise to conduct a preliminary meeting due to neighbor's concerns.
- Section 311 notification will be conducted in the future assuming the proposal moves forward.
- The Department requested plan revisions and clarifications in order to proceed with the proposal's review in November, 2006.
- Ms. Tsang filed DR on a previous permit that was cancelled as the work was incorporated into the current proposal. The Department transferred her DR request to the current proposal in fairness to Ms. Tsang.
- Ms. Tsang has a Block Book Notation on 2650 Hyde Street.

Historic Status

- 2650 Hyde Street is identified in Here Today and is considered a historic resource. The proposal is being reviewed pursuant to the Secretary of the Interior's Standards.

Overall History of 2650 Hyde Street (recent)

- The property owner has been attempting to get permits for various building alterations for approximately two years.
- Both DCP + DBI requested that all work be represented under one application, which is currently under review.
- All previous Building Permit Applications have been either cancelled or withdrawn.
- Senior building inspectors are monitoring permit activity on the property.

(over)

4. If you have discussed the project with the applicant, planning staff or gone through mediation, please summarize the results, including any changes that were made to the proposed project so far.

This application is part of an on-going dispute between the parties. The applicant and his representative, expediter Jeremy Paul have applied for numerous fraudulent permits over the counter making false representations regarding existing conditions at the site. After learning the facts the Dept. has revoked the false permits. However, applicant and the expediter continue unabated. We have requested that this permit also be revoked and the rear stairs build to the original, permitted configuration.

B. DISCRETIONARY REVIEW REQUEST

1. What are the reasons for requesting Discretionary Review? The project meets the minimum standards of the Planning Code. What are the exceptional and extraordinary circumstances that justify Discretionary Review of the project? How does the project conflict with the City's General Plan or the Planning Code's Priority Policies?

The applicant and his expediter have engaged in a non-stop attempt to expand this historical and protected building without permits for many years. They have added a full floor of occupancy without permits, they added new stairs and decks without permits or by lying to obtain over the counter permits. Recently three days before Christmas they applied for "repairs" to a garage that does not exist. These stairs were torn down and rebuilt in the required rear yard and this is an attempt to "paper over" the previous fraud.

2. If you believe your property, the property of others or the neighborhood would be adversely affected, please state who would be affected, and how:

The stairs and deck violate numerous Planning Code provisions and are built into the required rear yard without a variance and without neighborhood notice. Because of the small lots to the West, the stair land at the property line and tower over my home and invade my privacy and block my only source of light and air to my home. The constant construction outside my windows is a tremendous burden. The applicant is violating the law and has been for years

3. What alternatives or changes to the proposed project, beyond the changes (if any) already made would respond to the exceptional and extraordinary circumstances and reduce the adverse effects noted above (in question B1)?

I request that the stairs be reconfigured away from the rear property line. At present the stairs actually land at the fence line and touch the rear fence and property line. This RH-2 neighborhood is supposed to have a 45% rear yard or at least 15 feet and a minimum of 6 feet for the stairs. Thanks to their illegal activity there is zero rear yard and an occupied 3rd Floor with decks and stairs that were never permitted.

06.0396D

Please write (in ink) or type your answers on this form. Please feel free to attach additional sheets to this form to continue with any additional information that does not fit on this form.

CHECKLIST FOR APPLICANT:

Indicate which of the following are included with this Application:

REQUIRED:

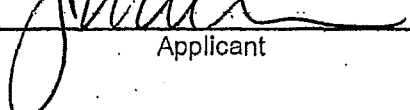
- Check made payable to Planning Department (see current fee schedule).
- Address list for nearby property owners, in label format, plus photocopy of labels.
- Letter of authorization for representative/agent of D.R. applicant (if applicable).
- Photocopy of this completed application.

OPTIONAL:

- Photographs that illustrate your concerns.
- Covenants or Deed Restrictions.
- Other Items (specify). Historical permits for stair showing only permit configuration.

File this objection in person at the Planning Information Center. If you have questions about this form, please contact Information Center Staff from 8 a.m. to 5 p.m., Monday to Friday.

Plan to attend the Planning Commission public hearing which must be scheduled after the close of the public notification period for the permit.

Signed 
Applicant

Feb. 2, 2006
Date

N:\applicat\drapp.doc

06.03960

 COPY

APPLICATION REQUESTING DISCRETIONARY REVIEW ("D.R.")

This application is for projects where there are exceptional and extraordinary circumstances that justify further consideration, even though the project already meets requirements of the Planning Code, City General Plan and Priority Policies of the Planning Code.

D.R. Applicant's Name Stephen Williams Telephone No: 292-3656

D.R. Applicant's Address 1934 Divisadero Street
Number & Street (Apt. #)
San Francisco 94115
City Zip Code

D.R. Applicant's telephone number (for Planning Department to contact): 292-3656 or 235-6172
If you are acting as the agent for another person(s) in making this request please indicate the name and address of that person(s) (if applicable):

Name Arza Trust Telephone No: _____

Address 769 North Point
Number & Street (Apt. #)
San Francisco 94109
City Zip Code

Address of the property that you are requesting the Commission consider under the Discretionary Review: 2650 Hyde Street

Name and phone number of the property owner who is doing the project on which you are requesting D.R.: Craig Greenwood 395-0880

Building Permit Application Number of the project for which you are requesting D.R.: 2006.01.10.1829

Where is your property located in relation to the permit applicant's property?
Directly next door to the East

A. ACTIONS PRIOR TO A DISCRETIONARY REVIEW REQUEST

Citizens should make very effort to resolve disputes before requesting D.R. Listed below are a variety of ways and resources to help this happen.

1. Have you discussed this project with the permit applicant? YES NO
2. Did you discuss the project with the Planning Department permit review planner? YES NO
3. Did you participate in outside mediation on this case? Community Board Other NO

06.039604

4. If you have discussed the project with the applicant, planning staff or gone through mediation, please summarize the results, including any changes that were made to the proposed project so far.

This application is part of an on-going dispute between the parties. The applicant and his representative, expediter Jeremy Paul have applied for numerous fraudulent permits over the counter making false representatons regarding exisiting conditions at the site. After learning the facts the Dept. has revoked the false permits. However, applicant and the expediter continue unabated. We have requested that thsi permit also be revoked and the rear stairs build to the original, permitted configuration.

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Please write (in ink) or type your answers on this form. Please feel free to attach additional sheets to this form to continue with any additional information that does not fit on this form.

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REQUIRED:

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Plan to attend the Planning Commission public hearing which must be scheduled after the close of the public notification period for the permit.

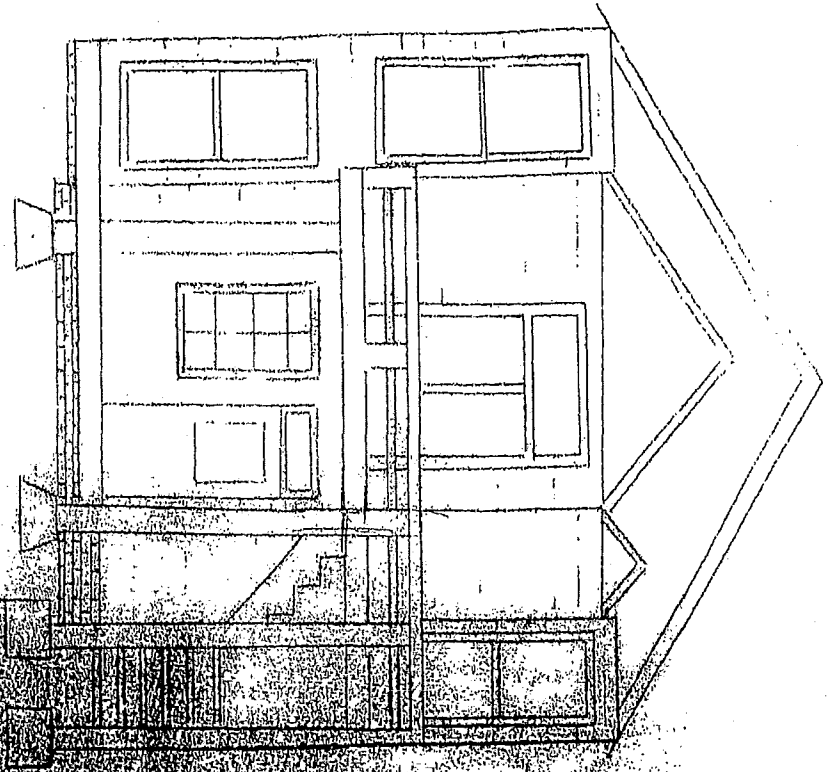
Signed _____

Applicant

Feb. 2, 2006
Date

06.03960

4597071

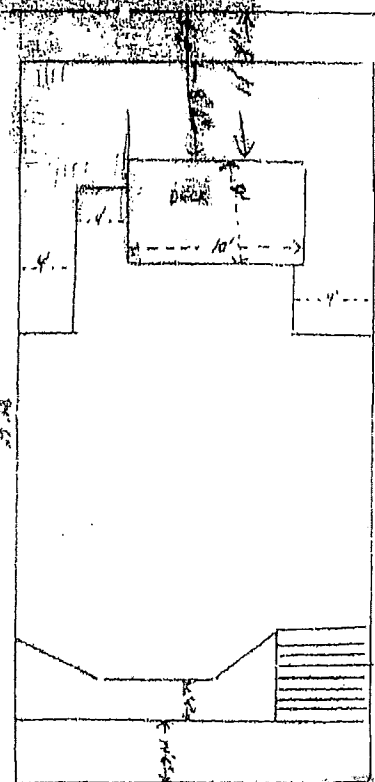
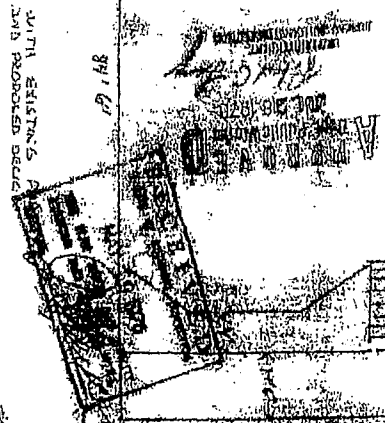


PROPOSED DECK
26'-0" x 52' HYDE

4597071

LOT PLAT WITH EXISTING AND PROPOSED DECK
26'-0" x 52' HYDE ST.

4597071



159

SD VARR
BLOCK No. 261

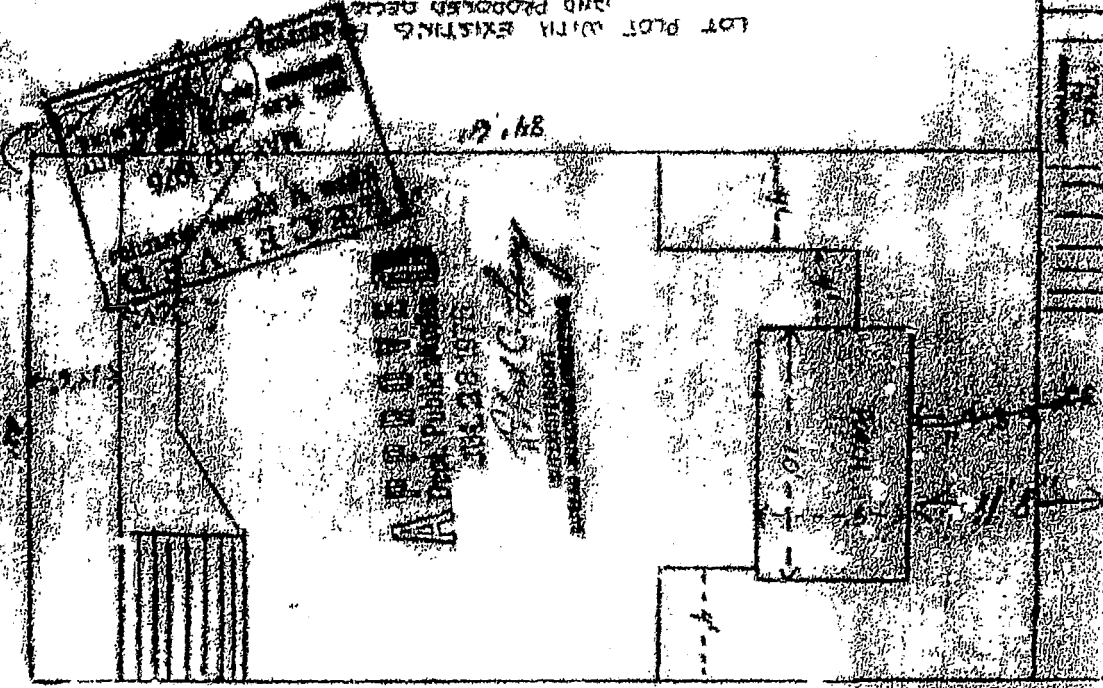
06-02960

459715

459747

2640-52 HYDE ST

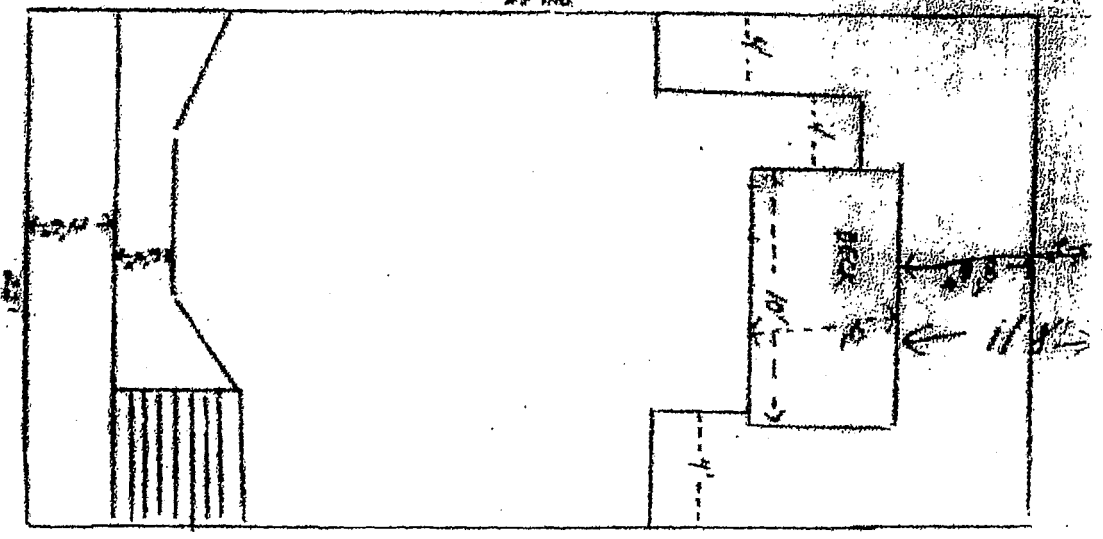
LOT WITH EXISTING
AND PROPOSED



84' 0"

HYDE ST

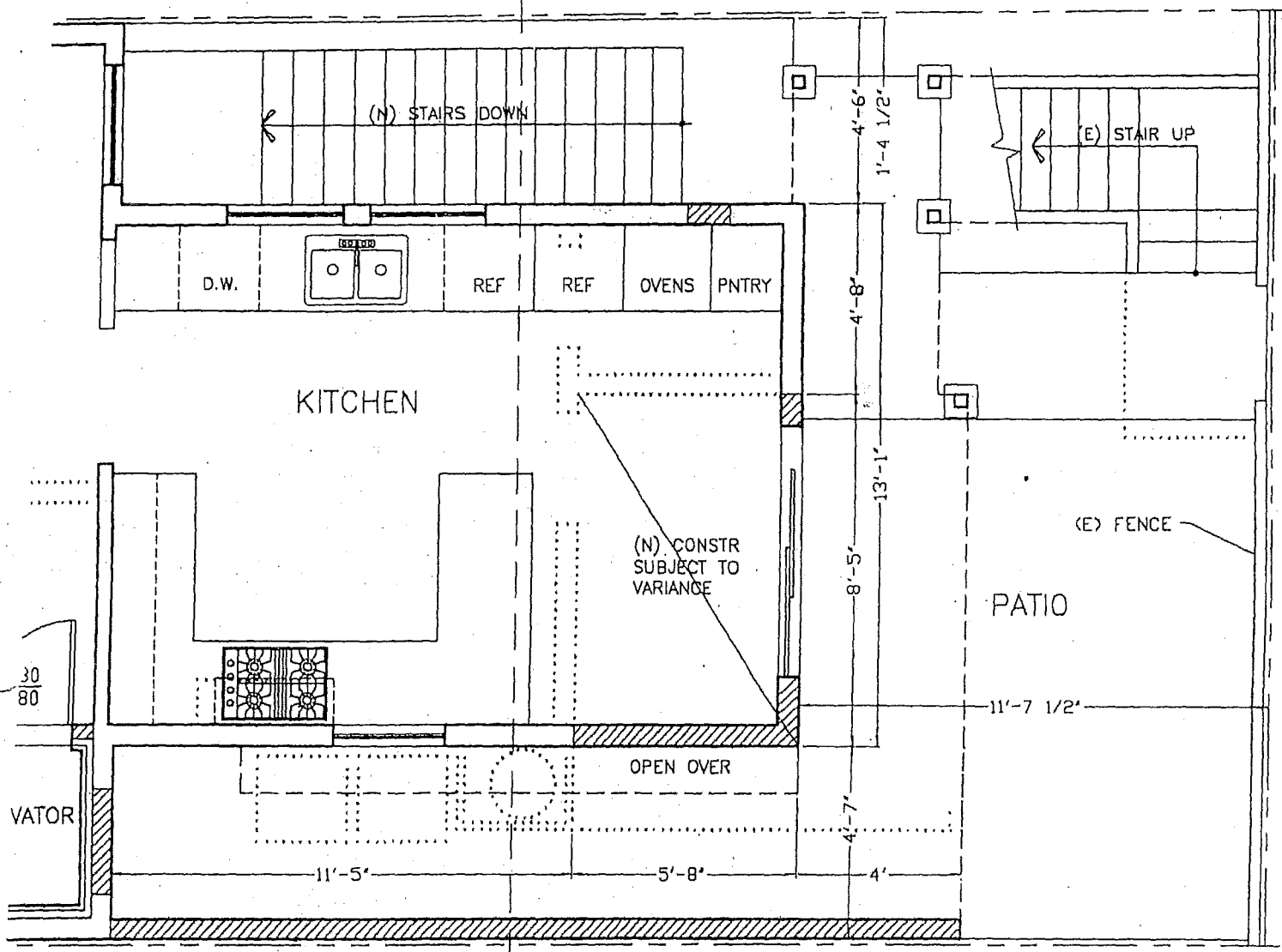
30' WIDE
ALONG N. SIDE



84' 0"

HYDE ST

4/4/05



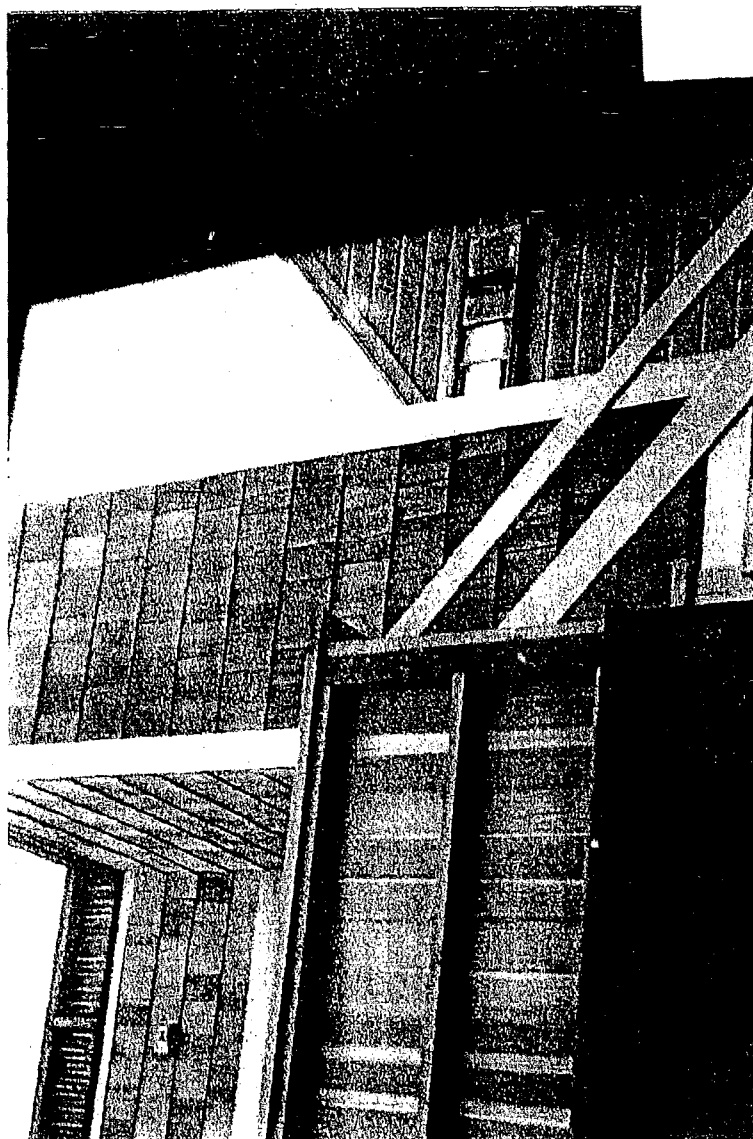
ROBERT MITTELSTADT ARCHITECT
1736 STOCKTON STREET, STUDIO 1, SAN FRANCISCO 94133
TEL 415-397-6895 FAX 415-397-6880

A2
04/04/05

P163

06.03960

New Deck &
Stairs in
Progress



P164

06.03960

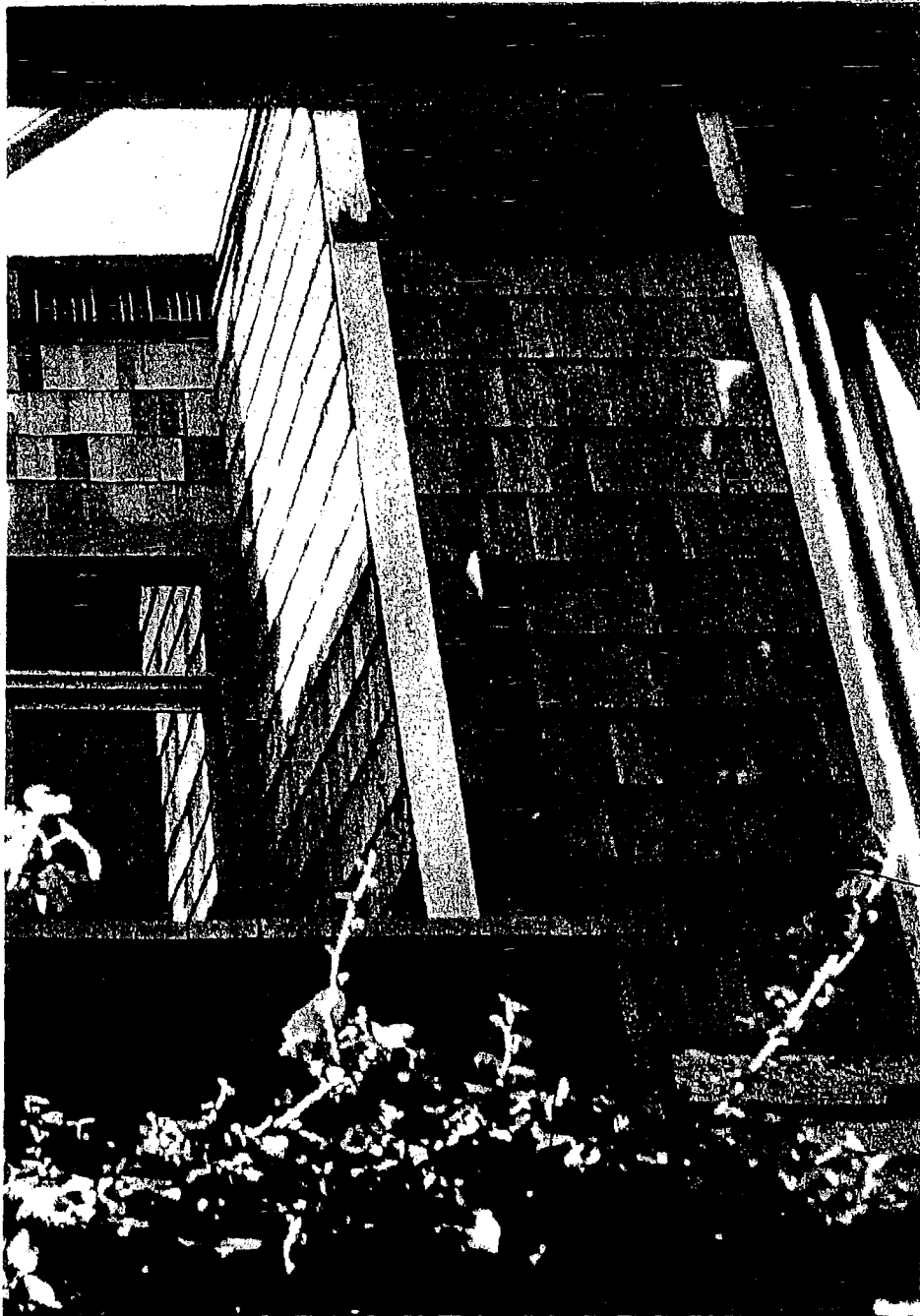


PHOTO FROM

1999

NO STAIRS

06 P165



SAN FRANCISCO PLANNING DEPARTMENT

MEMO

DATE: January 17, 2017
TO: SOTF – Victor Young, Administrator
FROM: Christine L. Silva, Manager of Commission Affairs
RE: File No. 16119

1650 Mission St.
Suite 400
San Francisco,
CA 94103-2479

Reception:
415.558.6378

Fax:
415.558.6409

Planning
Information:
415.558.6377

On Thursday, December 22, 2016, the Planning Department received an Immediate Disclosure Request via email from Ellen Tsang originally submitted on December 21, 2016 at 8:44 pm after business hours.

Ms. Tsang's email requested information related to a project at 2650 Hyde Street. In Ms. Tsang's email, she requests nine items, all of which are not requests for records (i.e. documents), but rather requests for information (where the request is for clarification, not for specific documents), see attached email.

On Tuesday, December 27, 2016, Planning staff Andrew Perry responded to Ms. Tsang's email clarifying and providing answers to the nine items while also indicating which records already in her possession would contain the information she sought, see attached email. It should be noted that we previously emailed Ms. Tsang PDFs of Record No. 2006.0396D and provided her access to the hard copy file in response to a past request.

At this time, the Department acknowledges that we failed to respond to the Immediate Disclosure Request before close of business the next business day per Admin Code Section 67.25. Instead, we were able to respond and complete her request the following business day, Tuesday, December 27, 2016.

All relevant documents and responses have been provided to the requestor.

Attachments:

Email – December 21, 2016 from Ellen Tsang to Planning staff
Email – December 27, 2016 from Andrew Perry to Ellen Tsang

From: [Ellen Tsang](#)
To: [CPC-RecordRequest](#); [PIC, PLN \(CPC\)](#); [Vellve, Sara \(CPC\)](#)
Cc: [Ellen Tsang](#)
Subject: Sunshine Immediate Disclosures Request December 21, 2016
Date: Wednesday, December 21, 2016 8:44:15 PM

Immediate Disclosure Request

Wednesday December 21, 2016

Re: Planning Department's Memorandum dated December 14, 2006 issued by Lawrence Badiner, Prior Zoning Administrator (no longer worked for the City of San Francisco) and planner Sara Vellve, property address at 2650 Hyde Street

Please provide the public record as following:

- 1) "Ms. Tsang filed DR on a previous permit that was cancelled";
- 2) this "previous permit" application number and the name of the permit applicant;
- 3) the name of the person who cancelled this permit and the date this "previous permit that was cancelled";
- 4) the DR number for this "previous permit";
- 5) the date that Planning transferred "her DR request to the current proposal";
- 6) the new transferred DR number.
- 7) the permit number for the new transferred DR.
- 8) the date and time the new transferred DR public hearing was held;
- 9) the Decision of this new transferred DR if the DR public hearing was in fact held.

I would request the response in electronic format, to this email address. If there is any reason for delay, this request should receive a response on a "rolling basis," as required by the Sunshine Ordinance.

As this is an IDR, I would expect a response no later than close of business on **Friday, December 23, 2016**

Please respond and identify the document by numbered requests.

Thank you.

From: [Perry, Andrew \(CPC\)](#)
To: [Ellen Tsang](#)
Cc: [CPC-RecordRequest](#)
Subject: RE: Sunshine Immediate Disclosures Request December 21, 2016
Date: Tuesday, December 27, 2016 2:08:27 PM
Attachments: [image001.png](#)
[image003.png](#)

Ms. Tsang –

1. It is unclear what record you are requesting here. The DR record that appears on file is 2006.0396D, and PDFs of that docket should already have been emailed to you. If you are requesting something else, please let us know.
2. Our records appear to indicate that the “previous permit” application, referenced as such in the 12/14/06 memo, is 2005.09.27.4018. The applicant for this permit was Robert Mittlestadt, as the project architect. This is the same applicant for the subsequent 2006.10.18.5315 permit.
3. DBI’s Permit Tracking system indicates that the withdrawal of BPA# 2005.09.27.4018 was requested by the project sponsor on 10/26/06. The permit was sent back to Central Permit Bureau that same day by Planner Sara Velve, however it does not appear that the permit was officially cancelled by DBI until 2/20/07. The note in Permit Tracking indicates that the permit was “withdrawn by sponsor, replaced by 2006.10.18.5315”
4. There does not appear to be a DR record number on file, associated with BPA# 2005.09.27.4018. However, looking at the subsequent DR record (2006.0396D), this application has an “intake” date of 2/2/06. It is possible the original DR record number is actually 2006.0396D and the same record number was transferred to the new permit, rather than create a new record ID.
5. It is unclear the exact date on which the DR application was transferred from the 2005.09.27.4018 permit to the 2006.10.18.5315 permit application. However, it must have occurred between the time when the second permit (2006.10.18.5315) was filed on 10/18/06 and the date of the memo to the CPC (12/14/06) indicating that it was transferred.
6. The DR record is 2006.0396D.
7. The DR was transferred to BPA# 2006.10.18.5315, which was the same applicant as the previous 2005 permit, cancelled by the applicant.
8. Our records do not indicate that a hearing was held on Case No. 2006.0396D, as the applicant requested withdrawal of the corresponding BPA# 2006.10.18.5315 on 9/22/08.
9. The DR was not held.

Regards,

Andrew Perry

Planner, NE Quadrant, Current Planning

Direct: 415-575-9017

**San Francisco
Planning**

1650 Mission Street, Suite 400
San Francisco, CA 94103

**SF Planning
Department**