Regular Meeting of the

Building Inspection Commission

January 15, 2025

Agenda Item 7

Appellant's Statement

Pre-Hearing statement for Harold Howell - December 24, 2024

Dear President Alexander-Tut,

I represent Harold Howell, the Principal of Mercury Engineering, an engineering company here in San Francisco. Mr. Howell has filed a notice of appeal with the Building Inspection Commission (BIC) and has a hearing set for January 15, 2025, regarding the Department of Building Inspection (DBI)'s decision to place Mr. Howell on the Expanded Compliance Control Program List. This document is Mr. Howell's prehearing brief.

Mr. Howell began his career as a civil engineer in the U.S. Air Force and then worked on complex engineering projects around the world for Bechtel Corporation for the next 30 years. After his corporate career, Mr. Howell returned to the Bay Area to spend more time with his family and opened his own structural engineering company, Mercury Engineering. Mr. Howell is a well-respected and trusted engineer having been in business in the City and County of San Francisco for over 20 years and having worked on projects large and small.

Recently, on April 1, 2024, DBI placed John Pollard on the Expanded Compliance Control Program List, pursuant to San Francisco Building Code § 103A.6. Mr. Howell offers that he is nothing more than collateral damage to DBI's efforts against Mr. Pollard since Mr. Howell owned Mercury Engineering with Mr. Pollard.. However, there is nothing in Building Code § 103A.6 that calls for inclusion on the Expanded Compliance Control Program List based on a mere association or relationship.

Unfortunately, the case against Mr. Howell has revealed DBI's dark side. Despite previously incurring very few Notice of Violations (NOVs) on his projects during the past 20 years, DBI management -- specifically Patrick O'Riordan, Matthew Greene, and Kevin Birmingham -- embarked on a campaign of personal attacks and selective enforcement in 2022 against Mr. Pollard (and therefore, against Mr. Howell). DBI selfinitiated complaints against projects worked on by Mr. Pollard and issued NOVs in quick succession for expired permits and where inspections had been performed by DBI Inspector William Walsh. See Exhibit A (DBI2024-other records-2024000366). The NOVs were issued during a nine-month period from January 2022 to September 2022 in an attempt to place Mr. Pollard on the Expanded Compliance Control Program List. This specific line of investigation was always about Mr. Pollard and not about Mr. Howell. DBI's own internal communications and analysis bear that out. Unfortunately, on February 5, 2022, DBI notified Mr. Howell that he too would be placed on the Expanded Compliance Control Program List and Mr. Howell immediately thereafter sought relief from the BIC.

As a threshold matter, Mr. Howell is a civil engineer. He is not a contractor. Mr. Howell and his company Mercury Engineering are primarily concerned with designing and constructing buildings and structures that are safe and capable of withstanding the elements to which they will be exposed, as well as improving the structural integrity of existing buildings. Mr. Howell uses his knowledge of physics, mathematics, and engineering principles to develop efficient and innovative solutions. Most importantly, civil engineers like Mr. Howell design and ensure life safety.

Building Code § 103A.6.1 was not created with civil engineers in mind. For example, for the Expanded Compliance Control Program, Building Code § 103A.6.1 provides in pertinent part that DBI seeks out instances of:

[1] Misrepresentation of existing conditions or project scope that results in circumvention of notification or review requirements;

[2] Structural work or demolition of structural features without or beyond the scope of a building permit;

- [3] Work under permit performed by a party without required license; or
- [4] Other substantial non-compliance.

DBI has identified the following NOVs as related to Mr. Howell: Complaint No. 202286619, Complaint No. 202290894, Complaint No. 202295341, Complaint No. 202288003 and Complaint No. 202294054.

And while DBI might view the selected NOVs in a particular light ("these complaints qualify Mr. Howell and Mercury Engineering for inclusion in the Department of building Inspection's Expanded Compliance Control Program"), nothing could be further from the truth. None of these complaints implicate life safety. None of these complaints evince that Mr. Howell misrepresented the existing conditions or project scope resulting in circumvention of notification or review requirements. None of these complaints show that Mr. Howell approved structural work or demolition of structural features. None of these complaints show that Mr. Howell completed his structural work without a license. And lastly, none of these complaints evince that Mr. Howell was otherwise in substantial non-compliance.

Mr. Howell is the civil engineer, not the contractor on these projects. His structural calculations or work is not in question. To date, DBI fails to provide any information on why these complaints implicate Mr. Howell or rise to level of egregiousness required for consideration for the Expanded Compliance Control Program.

Instead, DBI relies on personal attacks and presents faulty information and reasoning to continue its vendetta against Mr. Howell. For example, once provided notice of these NOVs, Mr. Howell requested a meeting with DBI and the parties met on March 6, 2024. In that meeting, DBI failed to provide any information regarding these NOVs, complaints or why DBI would include Mr. Howell on the Expanded Compliance Control Program List as a civil engineer. Patrick O'Riordan's April 1, 2024 Notice of Determination is disingenuous. DBI did not consider "all potential mitigating factors…." DBI failed to provide any information and declined to receive any. Mr. O'Riordan and his staff – specifically Matthew Greene, and Kevin Birmingham – sought to include Mr. Howell as collateral damage in their venomous efforts against Mr. Pollard.

After the March 6, 2024 meeting, DBI conspired to withhold information from Mr. Howell, see Exhibit B (DBI2024-HAROLD HOWELL(1)-2024000653 and DBI2024-HAROLD HOWELL(1)-2024000650) and basically cut and paste a staff memorandum arguing against Mr. Pollard to be utilized against Mr. Howell. See Exhibit C (DBI2024-HAROLD HOWELL(1)-2024000918). The responsibilities and efforts between a contractor and civil engineer are guite different. The words of DBI's Christopher Vergara are specifically concerning because it shows that DBI improperly concluded that Mr. Howell should be on the Expanded Compliance Control Program List **BEFORE** DBI drafted and considered any staff memorandum. See Exhibit C (DBI2024-HAROLD HOWELL(1)-2024000918) ("If we are using the same NOVs for Howell, then we might be able to just change the candidate's name in the report with a few tweaks here and there to tailor it to Howell."). This clearly demonstrates DBI's failures to provide any kind of process to Mr. Howell and to basically tie Mr. Howell to Mr. Pollard. No wonder DBI could not answer any questions about the inspections themselves or how Mr. Howell was involved. See Exhibit D (DBI2024-HAROLD HOWELL(1)-2024000653).

Lastly, the NOVs relied upon by DBI to place Mr. Howell on the Expanded Compliance Control Program List are factually incorrect. As a specific example, for the NOV written for 26 Parnassus, the first two statements are false. The NOV states that "there is no evidence of the required plumbing inspection and sign off." But in fact, the inspection and sign-off were completed on December 19, 2019, by Robert Farrow as indicated on the job card. The NOV also indicates that there is no evidence of the required "OK to cover" inspections by the building inspector. However, this is false as the job card clearly shows that the OK to cover was signed off on by William Walsh on July 29, 2016 These specific errors and all other errors across all 5 NOV's were shown to Matthew Greene on March 6, 2024, and Mr. Greene's refusal to correct these mistakes only further demonstrates his personal animus. Mr. Greene and therefore, DBI, allowed known incorrect information to be presented to the BIC by DBI.

There are further examples of DBI's overreach:

[A] 1336 Green Street, January 26, 2022 – Here at this property, the roof deck was built according to approved plans and issued a permit final. DBI issued an NOV on the basis that all of these approvals were done in error. The legal principle of detrimental reliance applies here and at most a Notice of Correction should have been issued.

[B] 221 – 5th Avenue, May 11, 2022, but amended June 3, 2022 -- DBI issued a NOV for expired permits and then an updated NOV for as built conditions differing from the plans. At the time of construction, Mr. Howell approved these changes with the building inspector Raphael Leopold. Unfortunately, Mr. Lepold has passed away so is unable to verify the history. DBI has requested a new permit to document the as built conditions which is in process. We believe that this permit will confirm the validity of the as built structure.

[C] 26 Parnassus, August 5, 2022 -- An NOV was issued for a garage door which

was larger than plans. A permit has been obtained to reduce the garage door size and NO revised structural drawings were required as this larger door had no structural impact on the property. A notice of correction should have been issued.

[D] 214 Fair Oaks, August 23, 2022 -- Work was not finished at the property as the owner had a change in circumstances and could no longer afford to continue with construction. An independent engineer verified the structure was safe and it is inconceivable that Mr. Howell can be held responsible for an owner not having the funds to complete a project.

[E] 3048 Fillmore Street, September 9, 2022 -- This NOV was issued in 2016 (201648071) and despite being an active case was closed on August 11, 2022 by Matthew Greene so he could re-open the case as a 2022 NOV. Mr. Howell's only involvement in this project was to design a new foundation and no issues with the foundation design have been identified. The system for this project/NOV is listed below. The only reason for Mr. Greene to close and reopen this matter with a "fresh" date would be to increase the number of violations against Mr. Pollard and Mr. Howell in the 18-month period. *See* Exhibit E.

I look forward to your response. Thank you in advance for your and the BIC's assistance with ensuring fair and due process.

Simon Yip

EXHIBIT A

From: To: Subject: Date: Birmingham, Kevin (DBI) Greene, Matthew (DBI) Possible compliance address Monday, January 10, 2022 1:58:01 PM

Hi Matt

While reviewing the inspection history about 23 Madrid St which was completed and a CFC issued but appears to be missing PID sign off. I pulled up the daily schedule for Bill Walsh and noticed several projects that were not reassigned to him had been added and finalized. 747 Waller St and 1336 Green St are SF Garage projects. In district 15, 2701 Jackson St in district 4 might also be suspect as well. Kevin

Kevin Birmingham

Senior Building Inspector City and County of San Francisco 49 South Van Ness Ave, Suite 400 San Francisco CA 94103 Desk # (628) 652 3606

EXHIBIT B AND D



From: Simon Yip <<u>simon@sfpermitting.com</u>>
Sent: Thursday, March 14, 2024 11:57 AM
To: Vergara, Christopher (DBI) <<u>chris.vergara@sfgov.org</u>>; Birmingham, Kevin (DBI)
<<u>kevin.birmingham@sfgov.org</u>>
Cc: Annabel McClellan

Subject: Harold Howell - Follow up

This message is from outside the City email system. Do not open links or attachments from untrusted sources.

Hi Chris and Kevin.

I just wanted to follow up with you both as I have yet to hear from either of you following our meeting last week. It was disappointing that Matt Greene did not attend as he is the DBI official with the most knowledge on these NOV's.

At the meeting you were both unable to provide answers to our specific questions for each address/violation. For the record, I would be grateful if you could:

- Specifically, identify how each DBI-initiated Notice of Violation against Harold correlates to the four stipulated categories outlined in the expanded compliance control program Sections 103A.6.1 (1) (2) (3) & (4).
- Explain thoroughly how DBI arrived at the above conclusions.
- Provide a chain of ownership on the above conclusions, including time and dates.
- Confirm recommendation timeframe.
- Provide a chain of ownership on the above recommendation, including time and dates.

To summarize:

Kevin, on behalf of Inspection Services and in the capacity as Acting Chief Building Inspector, has stated that as Harold was the engineer of record, he is basically responsible for the finish work in perpetuity.

Chris, on behalf of Compliance and in the capacity as Compliance Manager relayed our questions to Kevin as it was Inspection specific and Chris is not familiar with the inspections and NOV process.

Our position is that none of the self-initiated DBI Notice of Violations identified would fall into any of the four categories of Section 103A.6.1.

Kevin's position is flawed; Harold's involvement and remit ends, as with all structural engineers, at

EXHIBIT B

Subject: FW: PRIVILEGED AND CONFIDENTIAL FW: Harold Howell - Follow up

From: Hannan, Patrick (DBI) <<u>patrick.i.hannan@sfgov.org</u>> Sent: Tuesday, March 19, 2024 11:55 AM To: Birmingham, Kevin (DBI) <<u>kevin.birmingham@sfgov.org</u>>; Omran, Kelley (DBI) <<u>kellev.omran@sfgov.org</u>> Subject: RE: PRIVILEGED AND CONFIDENTIAL FW: Harold Howell - Follow up

Hi Kevin, Sounds good. Thanks.

Hi Kelley, Please process but I'd like to review the response before we send it.

Thanks, P

From: Birmingham, Kevin (DBI) <<u>kevin.birmingham@sfgov.org</u>> Sent: Tuesday, March 19, 2024 11:40 AM To: Hannan, Patrick (DBI) <<u>patrick.i.hannan@sfgov.org</u>>; Omran, Kelley (DBI) <<u>kellev.omran@sfgov.org</u>> Subject: FW: PRIVILEGED AND CONFIDENTIAL FW: Harold Howell - Follow up

Hi Guys

Chris Vergara suggested we treat this as a sunshine request for documents on Howard Howell.

From: Kapla, Robb (CAT) <<u>Robb.Kapla@sfcitvattv.org</u>> Sent: Friday, March 15, 2024 10:59 AM To: CHOI, JENNIFER (CAT) <<u>Jennifer.Choi@sfcitvattv.org</u>>; Vergara, Christopher (DBI) <<u>chris.vergara@sfgov.org</u>>; Greene, Matthew (DBI) <<u>matthew.greene@sfgov.org</u>>; Birmingham, Kevin (DBI) <<u>kevin.birmingham@sfgov.org</u>> Subject: RE: PRIVILEGED AND CONFIDENTIAL FW: Harold Howell - Follow up



EXHIBIT C

 From:
 Vergara, Christopher (DBI)

 To:
 Greene, Matthew (DBI); Birmingham, Kevin (DBI)

 Cc:
 Gasparac, Christine (DBI)

 Subject:
 RE: ECC

 Date:
 Monday, February 5, 2024 3:41:58 PM

 Attachments:
 Pollard ECC Staff Report - DRAFT.docx

Matt / Kevin / Christine,

Please see attached updated version of the ECC Staff Report for John Pollard. I have incorporated all requested edits from all. I have also named SF Garage Co. in the report, as it is now my understanding that we intend to put both Pollard and SF Garage Co. on the list. Additionally, the attached report will be used as a template for Harold E. Howell / Mercury Engineering ECC Staff Report as they involves all the same NOVs.

The notification letters for all of the above (as well as SIA and the two principals of SIA) are going out today 2/5/24, and I understand we provide them 10 days to respond. If they respond, we may need to amend these ECC Staff Report to incorporate potential mitigating factors.

Let me know if you need anything else.

Christopher J. Vergara Compliance Manager

Department of Building Inspection (628) 652-3537 SF.gov/DBI Sign up for customer updates

From: Vergara, Christopher (DBI)

Sent: Thursday, February 1, 2024 12:30 PM
To: Greene, Matthew (DBI) <matthew.greene@sfgov.org>; Birmingham, Kevin (DBI)
<kevin.birmingham@sfgov.org>
Cc: Gasparac, Christine (DBI) <christine.gasparac@sfgov.org>
Subject: RE: ECC

Matt / Kevin,

Please see attached revised DRAFT of the Pollard ECC Staff report. I changed the template to assure that we are checking off all the requirements per the ECC code. I made some edits to the language, but it is substantially the same in terms of content and messaging. Feel free to check more boxes off in the tables I provided. Let me know what you think. I did it based on my understanding on what you wrote.

If we are using the same NOVs for Howell, then we might be able to just change the candidate's name in the report with a few tweaks here and there to tailor it to Howell.

EXHIBIT E

Complaiı Number:	2	2016480	071					
Owner's Phone: Contact Name: Contact Phone:		- -	DATA SUPPRI	ESSED	Date Filed: Location: Block: Lot:	3048 FILLMORE S 0533	Т	
		-				026		
Complaina		SUPPRE	JNANT DATA SSED		Site:	3048 - 3050 Fillmo	ore	
					Rating: Occupancy Code: Received By:	Adora Canotal		
Complaina	ant's				Division:	PID		
Phone:	Source	311 INTERNET REFERRAL			Division.	TID		
Assigned t	- -	BID						
Division:			noticed that a	048 - 2050 Fillm	ore St has quite a bit of co	nstruction going on which	seems to exce	ed
Descriptio	n: t F	he scope Previousl	of the issues p y this was just	ermits. Specifica an unwarranted	lly I now see that a 2 story shed / apartment. In addi e structure they built is no	structure has been built i tion the retail space at 30	n the back. 50 Fillmore is	
Instruction	ns: ¢	omplain #201648	t received on 1 071 They seem	2/20/2016 under to not understan	ved from 311 SR NO. 564; 311 SR Nn. 6643559 - 30 d or do not care about a s omplete the job with no p	48 / 3050 Fillmore St top work notice as the trac	RE: DBI comp les people are	
	OR CUR		Y ASSIGNED		ID	DISTRICT PRIO	DITV	
BID	CHUNG				6353	DISTRICT PRIO	NIT I	
<u>REFFER.</u> DATE	AL INFO REFER			0	COMMENT			
	6 Ying Pei			CES	Referred to Director's He	aring for abatement		
7/1/2022	Maurici	o Hernai	ndez E	BID		20		
7/1/2022		o Hernai		CES				
3/10/202	2 Ronda Q	Queen	E	BID	Return to BID per Matt C	Greene]	
COMPLA DATE	INT STA TYPE	TUS AN	D COMMEN		COMMENT		UPDATED	DIV
	OTHER			CASE			BY Robert Power	
11/22/16	BLDG/HO VIOLATIO OTHER		Power	RECEIVED			22-DEC-16 Kevin	BID
11/28/16	BLDG/HO VIOLATIO OTHER		Power	CASE UPDATE	permit on file. district ins site visit. kmhugh	spector to follow up with	McHugh 28- NOV-16	BID
11/28/16	BLDG/HO VIOLATIO		Power	FIRST NOV SENT	working beyond scope. issued stop work order		Robert Power 28-NOV-16	BID
11/29/16	OTHER BLDG/HO VIOLATIO		Power	CASE UPDATE	1st NOV mailed to Yasin Salma, 2146 9th Av, SF, per R. Power request. g samaras		Giles Samarasinghe 29-NOV-16	BID
02/27/17	OTHER BLDG/HO VIOLATIO		Power	ADDENDUM TO NOV	supplement to previous		Norman Gutierrez 27- FEB-17	CES
12/22/16	OTHER BLDG/HO VIOLATIO		Power	SECOND NOV SENT	2nd nov sent by RP		JingJing Lu 23-DEC-16	IPR
12/23/16	OTHER BLDG/HO VIOLATIO		Power	CASE UPDATE	copy of amended to 1st no	ov mailed by jlu	JingJing Lu 23-DEC-16	IPR
12/23/16	OTHER BLDG/HO VIOLATIO		Power	CASE UPDATE	copy of 2nd nov mailed by jlu		JingJing Lu 23-DEC-16	IPR
12/27/16	GENERA MAINTEI	L	Power	REFERRED TO OTHER DIV	tranfer to div CES		Ying Pei 27- DEC-16	CPC
12/29/16	GENERA MAINTEI	L	Hinchion	CASE RECEIVED			DEC-10	CES
02/06/17	OTHER BLDG/H0 VIOLATIO	OUSING	Gutierrez		Process case for DH		Norman Gutierrez 07- FEB-17	CES
02/06/17	OTHER	OUSING	Gutierrez	CASE UPDATE	Schedule case for DH on	2/28/17	Norman Gutierrez 14- FEB-17	CES
02/14/17	OTHER	OUSING	Gutierrez	DIRECTOR HEARING NOTICE	DH Posting		Norman Gutierrez 14- FEB-17	CES
02/27/17	OTHER BLDG/HO	OUSING	Gutierrez	POSTED CASE UPDATE	Pre DH		Norman Gutierrez 27-	CES
02/28/17		OUSING	Gutierrez	CASE CONTINUED	to 4/4//17		FEB-17 Norman Gutierrez 27-	CES
03/27/17		OUSING	Gutierrez	CASE UPDATE	Pre DH		MAR-17 Norman Gutierrez 29-	CES
03/28/17		OUSING	Gutierrez	DIRECTOR'S HEARING	Advicement to 4/28/17		MAR-17 Norman Gutierrez 13-	CES
04/13/17		OUSING	Gutierrez	DECISION ASSESSMENTS DUE	3MMF 12/28/16 to 3/28/	/17	APR-17 Norman Gutierrez 13-	CES
04/13/17		OUSING	Gutierrez	CASE UPDATE	Abated with PA #201702 12/28/16 to 3/28/17	APR-17 John Hinchion 27-	CES	
04/04/18	VIOLATIO OTHER BLDG/HO	OUSING	Hinchion	CASE UPDATE			JUN-22 John Hinchion 27-	CES
06/28/22	VIOLATIO OTHER BLDG/HO	OUSING	Chung	CASE UPDATE	violation on the rear strue	case reopened due to the cture. Need permits for	JUN-22 Mike Chung 29-JUN-22	CES
06/30/22		OUSING	Lam	REFER TO DIRECTOR'S	work of rear building-mc Case Reviewed. PA#2017 the rear structure compla		.,	CES
	VIOLÁTIO OTHER	ON		HEARING DIRECTOR HEARING	DH 7/26/22. GL		Sonya Bryant	CES
0//12/22	BLDG/HO VIOLATIO		L'AIII	NOTICE POSTED	Prepare DH packet. SB		12-JUL-22	CES

Department of Building Inspection

EXHIBIT E

07/13/22	OTHER BLDG/HOUSING VIOLATION	Lam	DIRECTOR HEARING NOTICE POSTED	DH Notice Posted. Pictures ProcessedGL		CES
07/14/22	OTHER BLDG/HOUSING VIOLATION	Lam	CASE UPDATE	Cert mailed DH packets to owners on file. SB	Sonya Bryant 14-JUL-22	CES
	OTHER BLDG/HOUSING VIOLATION		CASE CONTINUED	Case Continued. Next Hearing Date: 9/13/22 DH. -GL		CES
	OTHER BLDG/HOUSING VIOLATION	Lam	CASE UPDATE	Prepared CDH packet. SB	Sonya Bryant 08-AUG-22	CES
08/08/22	OTHER BLDG/HOUSING VIOLATION	Lam	CASE UPDATE		Sonya Bryant 08-AUG-22	CES
08/10/22	OTHER BLDG/HOUSING VIOLATION	Lam	CASE UPDATE	Case Returned to BID per GM's emailGL		CES
	GENERAL MAINTENANCE	Lam	REFERRED TO OTHER DIV		Ronda Queen 10-AUG-22	CES
<mark>08/11/22</mark>	GENERAL MAINTENANCE	Helminiak	CASE CLOSED		Matthew Greene 11- AUG-22	BID
	OTHER BLDG/HOUSING VIOLATION			Case received in BID. File is located in J:\COMPLAINTS_BID_EID_PID\BID\2016\D16; slw	Suzanna Wong 10- AUG-22	BID

NOV (BID):

11/28/2016 12/21/2016 12/22/2016

Inspector Contact Information

NOV (HIS):

Online Permit and Complaint Tracking home page.

Technical Support for Online Services

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