

BOARD OF APPEALS

CITY & COUNTY OF SAN FRANCISCO

MEETING MINUTES – WEDNESDAY, NOVEMBER 16, 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 Jose Lopez, Commissioner Alex Lemberg, Commissioner John Trasviña, and Commissioner J.R. Eppler.

Jon Givner, Deputy City Attorney, Office of the City Attorney (CAT); Tina Tam, Deputy Zoning Administrator, Planning Department (PD); Matthew Greene, Acting Chief Building Inspector, Department of Building Inspection (DBI); Kate Toran, Director, San Francisco Municipal Transportation Agency, Taxis & Accessible Services Division (SFMTA); Philip Cranna, Enforcement and Legal Affairs Manager (SFMTA); Julie Rosenberg, Executive Director; Alec Longaway, Legal Assistant.

(1) **PUBLIC COMMENT**

At this time, members of the public may address the Board on items of interest to the public that are within the subject matter jurisdiction of the Board except agenda items. With respect to agenda items, your opportunity to address the Board will be afforded when the item is reached in the meeting with one exception. When the agenda item has already been reviewed in a public hearing at which members of the public were allowed to testify and the Board has closed the public hearing, your opportunity to address the Board must be exercised during the Public Comment portion of the calendar. Each member of the public may address the Board for up to three minutes. At the discretion of the Board President, public comment may be limited to two minutes. If it is demonstrated that comments by the public will exceed 15 minutes, the President may continue Public Comment to another time during the meeting.

SPEAKERS: Barry Taranto stated that information regarding permits appealable to the Board was changed on the Board’s website before the meeting today. He wanted to know who changed the website and if that person had the authority to do so. He stated that the Board’s Executive Director’s name was mentioned multiple times at the SFMTA Board meeting the previous day during the discussion about the appealability of taxi permits to the Board of Appeals. Mr. Taranto expressed concern that the Executive Director had an apparent conflict of interest, because she formerly headed the SFMTA Hearing Section.

(2) **COMMISSIONER COMMENTS & QUESTIONS**

SPEAKERS: President Swig wished everyone a Happy Thanksgiving.

PUBLIC COMMENT: None.

(3) ADOPTION OF MINUTES

Discussion and possible adoption of the November 2, 2022 minutes.

ACTION: Upon motion by Commissioner Trasviña, the Board voted 5-0 to adopt the November 2, 2022 meeting minutes.

PUBLIC COMMENT: None.

(4) APPEAL NO. 22-070

ZHIMIN LI, Appellant(s) vs. DEPT. OF BUILDING INSPECTION, Respondent PLANNING DEPT. APPROVAL	175 Southwood Drive. Appealing the ISSUANCE on September 23, 2022, to Gerardo Corpuz and Mary Allison, of an Alteration Permit (in response to Notice of Violation No. 202292465; legalize the construction of structure (existing deck) at rear yard which exceeds 8 feet in height and 100 square feet in area; new deck is approximately 6 by 9 feet). PERMIT NO. 2022/0722/9084. FOR HEARING TODAY.
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ACTION: Upon motion by Commissioner Lemberg, the Board voted 5-0 to grant the appeal and issue the permit on the condition that it be revised to require the deletion of the reference to Notice of Violation (NOV) Number 202292465, on the basis that the NOV only applies to the illegal sheds in the rear yard and not the illegal deck.

SPEAKERS: Zhimin Li, appellant; Juan Duque, agent for permit holders; Tina Tam, PD; Matthew Greene, DBI.

PUBLIC COMMENT: None.

(5) APPEAL NO. 22-007

<p>ROBERT SKRAK, Appellant(s)</p> <p>vs.</p> <p>MUNICIPAL TRANSPORTATION AGENCY, Respondent</p>	<p>Appealing the ISSUANCE on February 1, 2022, to Robert Skrak, of the Statement of Decision: SFMTA v. Robert Skrak (Robert Skrak does not have a current California Driver's License or an A-Card; the Taxi & Accessible Services' Notice of Nonrenewal is upheld, and Medallion No. 878 is revoked by the explicit operation of the provisions of the San Francisco Transportation Code).</p> <p>MEDALLION NO. 878.</p> <p>FOR FURTHER CONSIDERATION</p> <p>Note: On April 13, 2022, upon motion by Commissioner Lopez, the Board voted 3-1-1 (Vice President Lazarus dissented and President Swig absent) to grant the appeal and overturn the determination on the basis that the SFMTA is equitably estopped from revoking the medallion because Mr. Skrak reasonably relied on conversations with SFMTA managers and representatives who advised him that he had a waiver of the Full Time Driving Requirement and he should not sell his medallion. Further, allowing him to keep his medallion is necessary to avoid a grave injustice, it would not defeat a strong public policy and would not create any safety issues for the public. Lacking the four votes needed to pass the motion failed. Upon motion by Commissioner Honda, the Board voted 3-1-1 (Vice President Lazarus dissented and President Swig absent) to continue this matter to the Board's Call of the Chair for one year, on the basis that the SFMTA may enact legislation that would give Mr. Skrak the opportunity to sell his medallion. On May 9, 2022, President Swig recalled this Item from the Call of the Chair and placed it on the Board's July 20, 2022 calendar. On June 14, 2022, the matter was rescheduled to November 16, 2022.</p>
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ACTION: Upon motion by Vice President Lopez, the Board voted 5-0 to grant the appeal and overturn the determination on the basis that the SFMTA is equitably estopped from revoking the medallion because Mr. Skrak reasonably relied on the representations of SFMTA managers that he did not need to renew his A-Card.

SPEAKERS: Philip Cranna, SFMTA; Heidi Machen, attorney for appellant.

PUBLIC COMMENT: Robert Cesana, Carl Macmurdo, Mark Gruberg, Barry Taranto, Marcelo Fonseca, Dennis Kourkos, Dirk Neyhart and Charles Rathbone spoke in support of the appellant.

(6) **APPEAL NO. 21-064**

GEORGE HORBAL, Appellant(s)

vs.

MUNICIPAL TRANSPORTATION AGENCY,
Respondent

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).

MEDALLION NO. 1303.

FOR FURTHER CONSIDERATION.

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. On February 16, 2022, upon motion by President Swig, the Board voted 2-3 (Commissioner Lopez, Commissioner Honda and Commissioner Chang 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.

	<p>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. On May 11, 2022, 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 (given the vacancy on the Board), 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.</p>
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ACTION: Upon motion by Commissioner Trasviña, the Board voted 5-0 to grant the appeal and overturn the Decision on Reconsideration on the basis that: (1) the SFMTA hearing officer erred in issuing it because the hearing officer had already issued a decision, and (2) the SFMTA is equitably estopped from revoking the medallion because the appellant relied on statements made by the SFMTA.

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

PUBLIC COMMENT: Robert Cesana, Mark Gruberg, Mary McGuire, Dirk Neyhart, Marcelo Fonseca, Barry Taranto and Evelyn Engel spoke in support of the appellant.

(7) 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). MEDALLION NO. 753. FOR FURTHER CONSIDERATION. 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. On May 11, 2022, 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.</p>
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ACTION: Upon motion by Commissioner Lemberg, the Board voted 5-0 to grant the appeal and overturn the Reconsideration of Statement of Decision on the basis that: (1) the SFMTA hearing officer erred in issuing it because the hearing officer had already issued a decision, and (2) the

SFMTA is equitably estopped from revoking the medallion because the appellant relied on statements made by the SFMTA.

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

PUBLIC COMMENT: Mark Gruberg, Robert Cesana, Marcelo Fonseca, and Dirk Neyhart spoke in support of the appellant.

(8) SPECIAL ITEM: DISCUSSION AND POSSIBLE ACTION

On September 8, 2022, the San Francisco Municipal Transportation Agency ("SFMTA") advised the Board of Appeals that it would discontinue the practice of having the Board hear appeals related to taxi permit decisions. The commissioners will: (1) consider the possibility of sending a letter to the SFMTA which explains the factors considered by the the Board when deciding these types of cases, and (2) discuss whether other agencies have the authority to add to or take away the types of matters that fall within the jurisdiction of the Board of Appeals.

ACTION: None.

Special Note: The commissioners agreed, without a vote, to place an Item on the December 7, 2022 agenda which expands on the discussion from Item 8.

SPEAKERS: Kate Toran, SFMTA, Phillip Cranna, SFMTA, President Swig, Vice President Lopez, Commissioner Trasviña, Commissioner Lemberg and Commissioner Epler.

PUBLIC COMMENT:

Mark Gruberg pointed out that the SFMTA Board considered changes to the Transportation Code that would have made the discussion in Item 8 moot. He stated that he hoped the Board of Appeals would weigh in with the SFMTA Board before they had a chance to take the matter up again. He further stated that there was a mischaracterization of the relationship between the SFMTA and Board of Appeals as informal. He noted that there were specific references in the Transportation Code to the Board of Appeals. He stated that it was very important for the medallion holders to have the opportunity to go before the Board and that he believed there was a right under the Charter for the taxi permit appeals to be heard by the Board of Appeals.

Mary McGuire stated that she was confused that the Board's website was changed on October 25, 2022 to state that the Board did not hear taxi permit appeals. She did not understand why this was the case given Agenda Item No. 8. She stated that she thought the purpose of the agenda item was for the Board to decide whether or not to hear appeals related to taxi permits.

Robert Cesana thanked the commissioners for their support for the taxi medallion holders. He read Section 1120 of the Transportation Code which limits the hearing officer's authority to the regulations set forth in Section 1100. Mr. Cesana stated that SFMTA hearing officers are not independent.

Carl Macmurdo suggested that the Board write a letter to the SFMTA recommending that they remove the provision in the Transportation Code which limits the SFMTA hearing officers' authority.

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He further talked about Dirk Neyhart, a former medallion holder, who was unable to get a driver's license because he was the victim of a violent crime. He noted that Mr. Neyhart's medallion was revoked, and he stated that he believed this was a violation of the ADA.

Marcelo Fonseca thanked the commissioners for establishing that they are the last hope for justice. He stated that it has been a rough ride for taxi medallion holders since Uber and Lyft came to town and since the SFMTA decided to monetize taxi medallions.

Dirk Neyhart thanked the commissioners.

Barry Taranto stated that the medallion sales program was created, in part, as an exit strategy.

Dennis Kourkos stated that SFMTA Director Tumlin stated that he wanted to streamline the process by removing the Board of Appeals. He noted that the Board of Appeals can broaden its scope of review by looking at other factors, while the SFMTA hearing officers are constrained by the Code. He stated that the medallion holders have lost their faith and trust in the SFMTA because the SFMTA was not holding to their words. He stated that the taxi medallion holders need the Board of Appeals to uphold their rights.

ADJOURNMENT.

There being no further business, President Swig adjourned the meeting at 9:37 p.m.

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

<https://sf.gov/meeting/november-16-2022/board-appeals-hearing-november-16-2022>

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

https://sanfrancisco.granicus.com/player/clip/42506?view_id=6&redirect=true&h=96dc84251159f6855e9df387fb4beac7