

BOARD OF APPEALS

CITY & COUNTY OF SAN FRANCISCO

DRAFT MEETING MINUTES – WEDNESDAY, DECEMBER 7, 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); Corey Teague, Zoning Administrator, Planning Department (PD); Chris Buck, Urban Forester, San Francisco Public Works, Bureau of Urban Forestry (SFPW-BUF); Kate Toran, Director, San Francisco Municipal Transportation Agency, Taxis & Accessible Services Division (SFMTA); Julie Rosenberg, Executive Director; Alec Longaway, Legal Assistant.

(1) **SPECIAL ITEM**

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

ACTION: Upon motion by Vice President Lopez, the Board voted 5-0 to adopt the resolution.

PUBLIC COMMENT: None.

(2) **PUBLIC COMMENT**

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

SPEAKERS: None.

(3) COMMISSIONER COMMENTS & QUESTIONS

SPEAKERS: None.

(4) ADOPTION OF MINUTES

Discussion and possible adoption of the November 30, 2022 minutes.

ACTION: Upon motion by President Swig, the Board voted 5-0 to adopt the November 30, 2022 hearing minutes as amended by Commissioner Trasviña. The amendment clarified that Items 5(A) through (5D) were continued at the request of the parties.

PUBLIC COMMENT: None

(5) SPECIAL ITEM

Presentation by Chris Buck, Urban Forester, from San Francisco Public Works, Bureau of Urban Forestry. Mr. Buck will discuss the process for obtaining tree removal permits, relevant Code provisions, and the hearing process at Public Works.

SPEAKERS: Chris Buck, Urban Forester.

PUBLIC COMMENT: Dirk Neyhart asked whether the Department still posted paper notices for tree removal or if notices were only posted online.

(6) APPEAL NO. 21-116

<p>DR. PRITAM SUBHARWAL, Appellant(s)</p> <p>vs.</p> <p>PLANNING DEPT., Respondent</p>	<p>245 Marina Blvd. Appealing the ISSUANCE on December 15, 2021, to Dr. Pritam Subharwal, of a Notice of Cancellation (Two building permits have been cancelled by DBI at the request of the Planning Department due to the failure to submit requested or required revisions. Description of permits: Demolition Permit: Demolish three-story Type V construction single family dwelling; Site Permit: First Floor: enlarge existing garage, new front entry, new playroom; Second Floor: enlarge existing living, dining, and kitchen; Third Floor: enlarge existing bedrooms & bathrooms; 4th Floor: new passive collector area). PERMIT NOS. 2011/11/01/8065 (site permit) and 2019/02/11/2585 (demolition permit). FOR HEARING TODAY.</p>
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ACTION: Upon motion by President Swig, the Board voted 5-0 to continue this matter to February 22, 2023, with the request that the parties each provide a three-page brief and further that the Planning Department review the plans and submit them at the next hearing. This motion was made on the basis that the briefs and plans would assist the Board in coming to a resolution of this case.

SPEAKERS: Dr. Pritam Subharwal, appellant; Corey Teague, PD.

PUBLIC COMMENT: None

(7) APPEAL NO. 21-088

<p>GRASSY GROVE, LLC, Appellant(s)</p> <p>vs.</p> <p>ZONING ADMINISTRATOR, Respondent</p>	<p>145 Jefferson Street.</p> <p>Appealing the ISSUANCE on August 18, 2021, to Enso Management Company, of a Letter of Determination (The request seeks confirmation of the following: 1) whether a proposed cannabis museum, including museum tour space, exhibition cannabis growing and processing spaces, and a gift shop containing a licensed retail cannabis dispensary would be considered a General Entertainment use; and 2) whether the gift shop, containing a licensed retail dispensary selling cannabis products, would be subject to the location controls of Planning Code Section 202.2, specifically, the required 600-foot buffer between Cannabis Retail establishments. The Zoning Administrator determined that the proposed cannabis museum would be a use that principally provides entertainment and leisure to the general public and would generally meet the definition of General Entertainment. If certain criteria are met, then the cannabis retail activity within the proposed museum is considered an accessory use and is not subject to Planning Code requirements applying to Cannabis Retail as a Principal or Conditional use, this includes the 600-foot buffer location requirements prescribed by Planning Code Section 202.2).</p> <p>RECORD NO. 2021-001699ZAD. FOR HEARING TODAY.</p> <p>Note: On October 19, 2022, upon motion by Commissioner Eppler, the Board voted 5-0 to continue this matter to December 7, 2022, so that the Planning Department could have time to file a late brief.</p>
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ACTION: Upon motion by President Swig, the Board voted 1-4 (Vice President Lopez, Commissioner Trasviña, Commissioner Lemberg and Commissioner Eppler dissented) to deny the appeal and uphold the determination, on the basis that the Zoning Administrator did not err or abuse his discretion and the determination was properly issued. Lacking the three votes needed to pass, this motion failed.

Upon motion by Commissioner Eppler, the Board voted 5-0 to grant the appeal and overturn the determination on the basis that the Zoning Administrator erred in determining that the gift shop for this case was an Accessory Use.

SPEAKERS: Todd Williams, attorney for appellant; Desmond Morgan, agent for appellant; Ray Connolly, agent for appellant; Corey Teague, PD.

PUBLIC COMMENT: None

(8) SPECIAL ITEM: DISCUSSION AND POSSIBLE ACTION

On September 8, 2022, the San Francisco Municipal Transportation Agency ("SFMTA") advised the Board of Appeals (BOA) that it would discontinue the practice of having the Board hear appeals related to taxi permit decisions. The commissioners will consider the possibility of sending a letter to the SFMTA which requests reconsideration of this decision and possibly also explaining: (1) the reasons why the BOA believes that the SFMTA should allow taxi permit appeals to be heard by the BOA, and (2) the factors considered by the Board when deciding these types of cases.

ACTION: Upon motion by President Swig, the Board voted 5-0 to direct the Executive Director and Vice President Lopez to draft a letter to the SFMTA covering the issues identified by the Vice President at the hearing. This draft letter would be considered by the Board at the hearing on January 4, 2023.

SPEAKERS: Kate Toran, SFMTA.

PUBLIC COMMENT:

Dirk Neyhart stated that the meetings between the Board of Appeals and SMFTA should be open to the public. He further wanted to know why he did not get an answer to the question he posed during his public comment for Item 5.

Mark Gruberg stated that he liked the fact that the SFMTA took a step back, but he was concerned that they may try to impose unreasonable conditions. Mr. Gruberg referenced the draft MOU from 2013 that was being considered by the BOA and SFMTA which was not executed. He noted that under the draft MOU, the SFMTA wanted the standard of review to be error or abuse of discretion and further it had restrictions on the types of cases that could be appealed to the BOA. Mr. Gruberg advised the BOA not to accept as a given that they lacked jurisdiction under the Charter.

Carl Macmurdo thanked the commissioners for their diligence in immersing themselves in the regulatory matters of the taxi industry. He stated that without the BOA rights, the hearing process at the SFMTA would be a sham.

Marcelo Fonseca thanked the Board for discussing this matter again. He stated that the taxi cases heard on November 16th had enough evidence to show that the ethical fire wall that the SFMTA bragged about, had been jumped over and the SFMTA could not be trusted with the taxi permit appeals. He stated that that taxi permit appeals should be heard by the BOA. He noted that Supervisor Peskin was the author of Proposition A, which transferred power to the SFMTA to regulate taxis. Mr. Fonseca suggested that the Board write a letter to Supervisor Peskin asking him to amend Proposition A to allow for appeals to the BOA.

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Mary MacGuire thanked the Board for getting involved with this issue and for writing a letter to the SFMTA. She further stated that she believed that the taxi industry's appeal rights were codified and not an informal arrangement as characterized by SFMTA Director Tumlin in his letter to the BOA dated December 5, 2022.

Barry Taranto thanked the Board for taking the time to deal with this important issue. He talked about changing conditions since Uber and Lyft started driving in the City. He further noted that medallions could not be sold and that driving in the streets was very dangerous.

(9) SPECIAL ITEM: DISCUSSION AND POSSIBLE ADOPTION OF THE DEPARTMENTAL ANNUAL REPORT FOR FISCAL YEAR 2021-2022.

ACTION: Upon motion by President Swig, the Board voted 5-0 to adopt the FY22 Annual Report as amended by Commissioner Trasviña and Commissioner Lemberg. These amendments were non-substantive, technical amendments.

SPEAKERS: Executive Director Rosenberg, President Swig, Vice President Lopez, Commissioner Lemberg, Commissioner Trasviña, and Commissioner Eppler.

PUBLIC COMMENT: None.

ADJOURNMENT.

There being no further business, President Swig adjourned the meeting at 9:42 p.m.

The supporting documents for this meeting can be found at the following link:
<https://sf.gov/meeting/december-7-2022/board-appeals-hearing-december-7-2022>

A video of this meeting, can be found at the following link:
https://sanfrancisco.granicus.com/player/clip/42600?view_id=6&redirect=true&h=7b571f50f2626b61673e1b8f5ff40b1d