Minutes Received at CPC Hearing 4/7/22

Comments for Minutes on Informational Hearing on 2022 Draft Housing Element April 7, 2022 Item No. 10 150 words G Schuttish

Rezoning Program will take three years, Commission should use their **legislative authority** in Section 317(b)(2)(D).
Adjustment/Reduction of Demo Calcs would act as Interim Controls.
The Commission has the **legislative_authority** to implement Interim Controls which are needed to restrain speculation during three years.

Draft highlights fact most of SF population is over 65.
People in this age cohort seem to live mostly in areas that are being primed for Rezoning.
Many in this cohort will die in the next decade+.
Should analyze this demographic shift and what it means regarding housing needs/demand issues raised in Draft Element.

Most tree canopy is in private rear yard mid block open space.
Soil is important too for carbon capture.
Trend has been cementing over rear yards with excavations and retaining walls.
The 2022 Housing Element needs to assess this loss of a productive way to fight Climate Change.

DIAMOND
Received at CPC Hearing 4/7/22
Housing Element

April 7, 2022

Ms. Kimia Haddadan
President Rachael Tanner
Vice President Kathrin Moore
Commissioner Sue Diamond
Commissioner Frank Fung
Commissioner Joel Koppel
Commissioner Theresa Imperial
Commissioner Gabriella Ruiz

Re: Information Hearing on 2022 Housing Element (April 7, 2022)

Dear Ms. Haddadan, President Tanner, Vice-President Moore and Fellow Commissioners:

Here are several points about this third Draft:

Rezoning Program

Since the Rezoning Program will take three years, I urge the Commission to use their *legislative authority* granted in Section 317 (b) (2) (D). This adjustment and reduction of the Demo Calcs would act as Interim Controls. Since the Calcs have never been adjusted since 2009 the values should be reduced accordingly to make up for this over sight. The Commission has the *legislative authority* to implement Interim Controls as well. This "belt and suspenders" approach would preserve existing housing while the Rezoning Program was underway. It would mitigate against any "wild west type speculation" particularly in the Priority Equity Geographies.

Demographic Issues

Please do a comparison or an analysis of the linkage between the "age" chart on page 194 of the packet; Figure 70 on page 280 of the packet which is "Seniors by Census Tract"; and the Map on page 409 of the packet. Why do I suggest this? The Draft highlights the fact that most of the population are over 65 and the people in this cohort seem to live mostly in the areas that are being primed for rezoning. *Let's be honest*. Many in this cohort will die in the next decade. Many are already dying. If a large majority of the people in this cohort are property owners in the neighborhoods that are suggested for upzoning...the Well-resourced Neighborhoods... what does this turnover portend for these properties and future development? Are they safe from speculation or not? How will they add or subtract to the long term generational wealth of the descendants. Or will they play a different role in the San Francisco real estate market?

Lot Consolidation

This is in Attachment C, page 169, Policy 25 (k). What is this? Does this mean what is now called, "Lot Merger"?

Tree Canopy Cover

Attachment D, page 308 and page 309, Figure 94. *The Tree Canopy in San Francisco is very important.* A large amount of it is in private rear yard mid block open space. Soil is important too for carbon capture. In the past 10 years or so the trend has been to fundamentally cement over rear yards in the RH neighborhoods with excavations and retaining walls. The 2022 Housing Element needs to assess this further loss of a productive way to fight Climate Change.

cc: Housing Element Staff; Commission Secretary, Mr. Ionin; Director Hillis; City Attorney, Ms. Jensen/Mr. Yang

RE: HYBRID MTGS. #2021-009977CRV

Received at CPC Hearing 4/7/22

2021-009977 4/6/2022

BAY AREA & BUSINESS

S.F. has highest rate of infections in state

By Aidin Vaziri

San Francisco now has the highest coronavirus infection rate of any county in California, followed closely by several other Bay Area counties where COVID-19 downward trends have stalled as the highly transmissible BA.2 subvariant extends its dominance.

The Bay Area overall is reporting about 700 new cases a day across its nine counties, still reflecting its steep drop since the winter surge that saw a peak of more than 18,000 new daily cases. But the number remains much higher than the 200 reported during last year's summer lull before the delta variant of the virus took hold.

It's not yet clear how big an impact on trends and illnesses might flow from BA.2, the omicron subvariant that federal data shows now is fueling 3 out of 4 COVID cases in the western region of the United States.

San Francisco reported a 7-day average of 14 cases per 100,000 residents as of Tuesday. By comparison, San Francisco was as high as 274 per 100,000 people during the winter peak, and recorded an average 1.1 per 100,000 at its low in June. State data released Tuesday showed the other Bay Area counties, along with Del Norte, clustered at the top of the list with the highest case rates in the state.

San Francisco's effective reproduction number, which predicts the average number of people each infected person will pass the virus to, is now 1.12, compared to the overall California rate of 0.86. To slow down spread, the number should be below 1.

"That's all fueled by BA.2," said Dr. Peter Chin-Hong, an infectious diseases expert at UCSF. He said that the true proportion of the subvariant is likely higher than the federal estimates — which show BA.2 nationwide now accounting for 72% of coronavirus infections — due to a reporting lag.

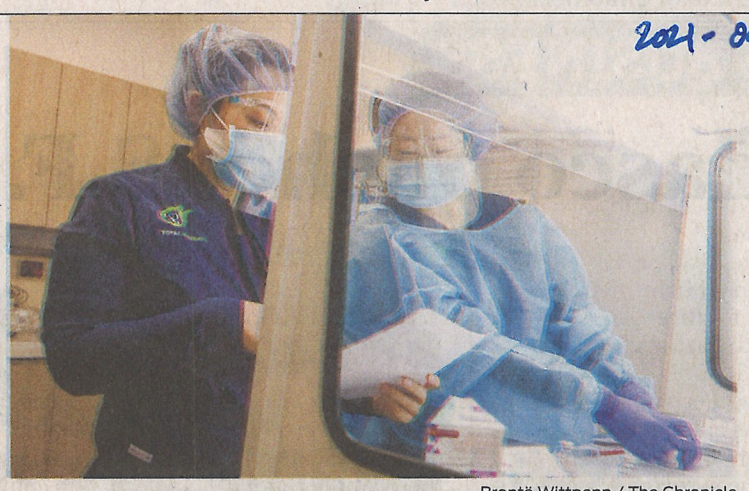
"It is worrisome," said Chin-Hong. "We have this thing coming, and we don't know how it will impact the population."

Travel, spring break activities, and loosening COVID safety measures are also contributing to the turnaround in case rates, Chin-Hong added.

"When you walk around San Francisco you see tons of people, and a lot of them are visitors. The city is dense," he said. "That's why you see that cases and the test positivity rate inching up."

After more than two months of steep decline, daily average case rates across the Bay Area and much of California have leveled out while hospitalizations have continued to fall.

As of this week, the California Department of Public Health said it would stop providing daily updates on its public COVID-19 data dashboard. It will shift instead to providing its data releases on COVID-19 cases and deaths, test positive rates, hospitalizations and vaccine coverage only on Tuesdays and Fridays.



Brontë Wittpenn / The Chronicle

Nurse practitioners Macy Sun (left) and Paige Yang check a chart before treating a patient at Total Fusion in Oakland.

"We have learned over the course of this pandemic that it is more helpful to look at data trends over time and that public health recommendations should be based on consistent trends rather than day-over-day changes, which are impacted by various testing and reporting patterns over weekends and holidays," the California Department of Public Health said in a statement to The Chronicle.

The change aligns with the state health department's new "SMARTER" tracking system using multiple surveillance prongs "including wastewater surveillance which is not as subject to the evolving changes in testing patterns and behaviors," state officials said. "This also better aligns state reporting with variable days of data reporting from local health jurisdictions and laboratories."

The change makes sense for now as the state redeploys members of its pandemic response team to other health areas overshadowed in the past two years, said Dr. George Rutherford, a professor of epidemiology at UCSF.

"We have all these other problems we need to deal with, like the fentanyl crisis," he said.

Rutherford said county officials would continue to monitor the data daily and state officials can increase reporting as needed. "It's not like they can't scale it back up again," he said.

He expressed some optimism that BA.2 may sweep through the region without causing much disruption.

"If you look at Western Europe where BA.2 is the predominant variant, in many countries the case rates continue to fall," Rutherford said. "The two outliers are the U.K. and Germany. It's hard to tell exactly which way things will break."

Experts see the potential for another variant to emerge as more concerning.

A new COVID-19 variant, known as XE, was identified in the United Kingdom this week. It is believed to be a combination of the original BA.1 omicron variant and its subvariant BA.2, known as a "recombinant" variant, and more transmissible than both.

Given the uncertainty around new variants, Chin-Hong said, it may be premature for the state the change its daily reporting practice.

"The timing has some people on the edge of their seats because we don't know what's going to happen," he said.

"Everyone will get nervous as these numbers continue to go up," he said, "But because BA.2 is coming right after BA.1, the same rules apply. It's all omicron. If you are vaccinated and boosted you still have an outstanding chance of staying out of the hospital."

A poll conducted by the Public Policy Institute of California in March found that most Californians believe the worst of the pandemic is over, but also that more than 6 in 10 favor efforts to control the spread of COVID-19, even if this means some restrictions.

Fifty-seven percent, for example, supported requiring proof of vaccination to enter large outdoor gatherings or indoor spaces such as restaurants, bars, and gyms, while 41% opposed it, the poll found.

Public health officials continue pressing vaccination as the best course to stem the pandemic and are urging people to take advantage of the newly authorized extra booster shots available to people 50 and older and those with immune-compromising conditions.

"Getting an additional booster is the best way to strengthen protection against COVID," Gov. Gavin Newsom said on Twitter.

In California, three quarters of those eligible, over age 5, are fully vaccinated. Of those, 57.3% have received booster doses.

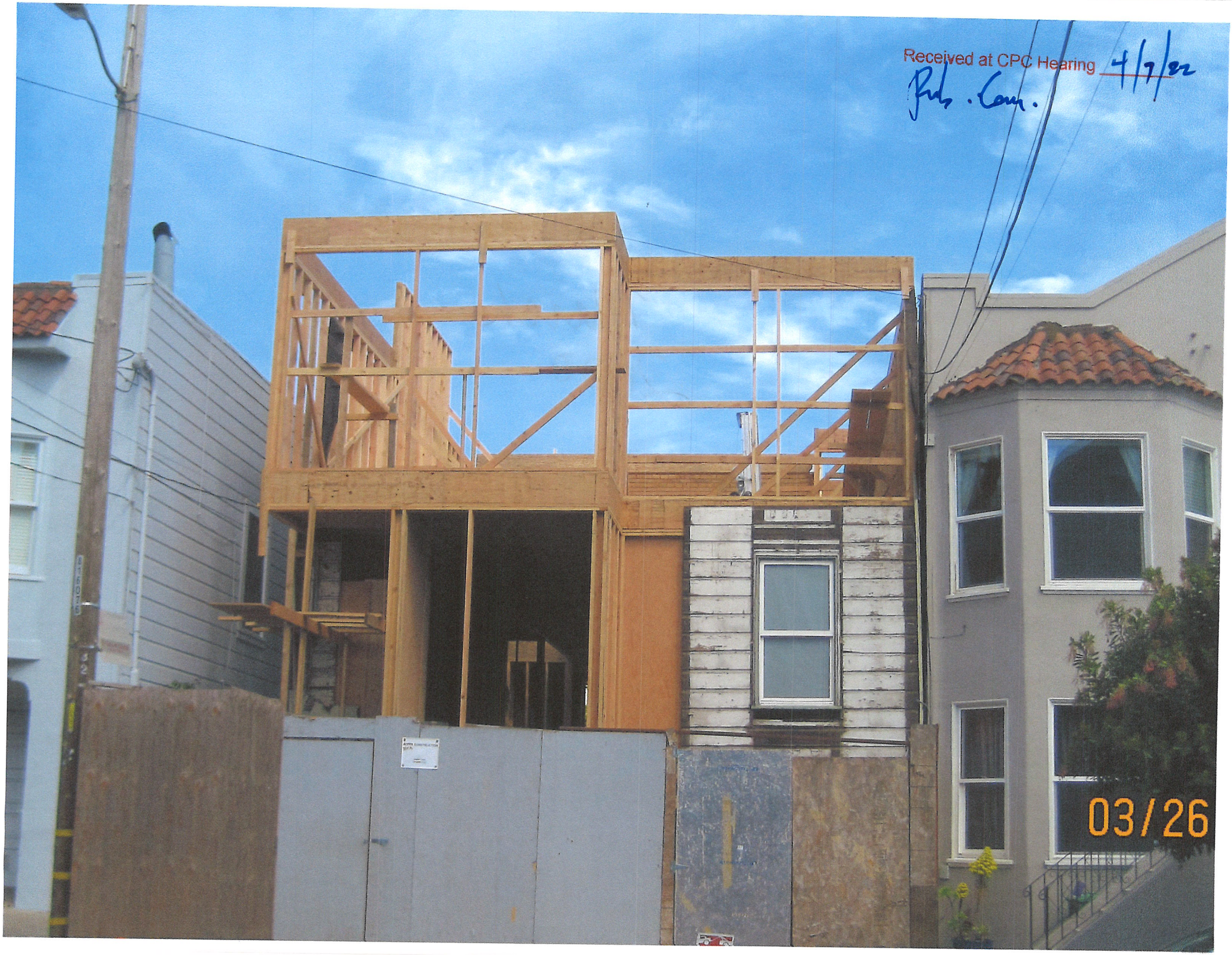
Aidin Vaziri (he/him) is a San Francisco Chronicle staff writer. Email: avaziri@sfchronicle.com

July
2015

4028 25th St.

340 Jersey St

March 2020


Received at CPC Hearing 4/7/22
Pub. Com.
03/26

SEC. 317. LOSS OF RESIDENTIAL AND UNAUTHORIZED UNITS THROUGH DEMOLITION, MERGER, AND CONVERSION.

(a) **Findings.** San Francisco faces a continuing shortage of affordable housing. There is a high ratio of rental to ownership tenure among the City's residents. The General Plan recognizes that existing housing is the greatest stock of rental and financially accessible residential units, and is a resource in need of protection. Therefore, a public hearing will be held prior to approval of any permit that would remove existing housing, with certain exceptions, as described below. The Planning Commission shall develop a Code Implementation Document setting forth procedures and regulations for the implementation of this Section 317 as provided further below. The Zoning Administrator shall modify economic criteria related to property values and construction costs in the Implementation Document as warranted by changing economic conditions to meet the intent of this Section.

(b) **Definitions.** For the purposes of this Section 317, the terms below shall be as defined below. Capitalized terms not defined below are defined in Section 102 of this Code.

(1) "Residential Conversion" shall mean the removal of cooking facilities, change of occupancy (as defined and regulated by the Building Code), or change of use (as defined and regulated by the Planning Code), of any Residential Unit or Unauthorized Unit to a Non-Residential or Student Housing use.

(2) "Residential Demolition" shall mean any of the following:

(A) Any work on a Residential Building for which the Department of Building Inspection determines that an application for a demolition permit is required, or

(B) A major alteration of a Residential Building that proposes the Removal of more than 50% of the sum of the Front Facade and Rear Facade and also proposes the Removal of more than 65% of the sum of all exterior walls, measured in lineal feet at the foundation level, or

(C) A major alteration of a Residential Building that proposes the Removal of more than 50% of the Vertical Envelope Elements and more than 50% of the Horizontal Elements of the existing building, as measured in square feet of actual surface area.

(D) The Planning Commission may reduce the above numerical elements of the criteria in Subsections (b)(2)(B) and (b)(2)(C), by up to 20% of their values should it deem that adjustment is necessary to implement the intent of this Section 317, to conserve existing sound housing and preserve affordable housing.

CONTENTS

Georgia Schuttish
4.7.2022

1660 Mission Street, Suite 500
San Francisco, California 94103

EXHIBIT 1: A RECENT HISTORY OF RESIDENTIAL DEMOLITION REVIEW

The following provides a timeline of ordinances, hearings, and policies related to the review or control of residential demolitions, beginning nearly eighteen years ago.

September 1988 The Commission adopted Resolution 11475, an ordinance creating Article 5 of *The Planning Code*. This established interim controls, which (in part) defined and controlled residential demolitions in RH-1 and RH-2 Districts. Section 511 mandated that residential structures could be demolished only if they presented a public safety hazard, or if a soundness criterion for demolition was met. If a soundness evaluation, submitted on behalf of the applicant and prepared by a contractor or engineer demonstrated that the cost to make the existing house "safe and habitable", as defined in the *Housing Code* (the "Upgrade Cost") exceeded by more than 50% the cost of building a new house equivalent to the existing one, based upon DBI's adopted costs of construction (the "Replacement Cost"), then the residence could be demolished. A subsequent Zoning Administrator bulletin extended this requirement to residential structures in all R-Districts. The Interim Controls were originally adopted for a period not to exceed eighteen months.

March 1990 The Commission adopted Resolution 11900, extending the interim controls. Article 5 ultimately expired in 1993.

April 1995 The Commission approved Resolution 13873, adopting a Residence Element Program Document that contains residential demolition, merger and conversion guidelines and criteria where Conditional Use authorization is required. It also recommends conditions of approval for replacement housing. It does not address the breadth of current residential demolition issues, nor does it offer specific criteria for evaluation and review of "as-of-right" demolition applications. The discussion of the General Plan and Residence Element is thorough and informative, and this document still governs CU review of housing lost through merger, conversion and demolition, although the Department has applied current Soundness costs and criteria to CU projects rather than the out-dated criteria in this document.

December 2000 The Commission adopted Resolution 16053 requiring Discretionary Review for all building permit applications resulting in the removal of a legal dwelling unit, whether by merger or removal. It was unaccompanied by any formal criteria for evaluation of demolitions, but the Department did continue the practice of requiring a Soundness Evaluation, in the form of a letter from the Department of Building Inspection's Housing Inspection Division (DBI-HID), to determine whether the building was unsound.

December 2001 DBI-HID stopped providing Soundness Evaluations for Planning Department use in demolition review and DR hearings.

April 2002 Planning staff developed written criteria for evaluation of demolitions to aid in formulating recommendations to the Commission. These criteria were not formally adopted by the Commission, but comprised appropriate considerations under the General Plan, definitions from (expired) Article 5, and other Planning Code requirements. This information was provided to the public and staff in a handout that also explained the review and hearing processes.

May 2003 The Commission heard a status report of the demolition application procedures then

in place, and adopted staff recommendations for review processes and criteria as an "Interim Policy," under which demolition applications could be analyzed during a test period of several months.

December 2003 The issues and results of the May 2003 Interim Policy were considered in hearings that culminated in the adoption of Resolution 16700. That Resolution enacted a "Temporary Policy" that requires mandatory Discretionary Review (DR) hearings on permit applications to demolish any residential structures, unless Conditional Use authorization is required for demolition approval or unless the project meets one of several exceptions. The results of cases heard under the Interim policy were considered, and criteria employed in that policy were refined, expanded or eliminated. DR application forms were finalized, a demolition DR staff report template was developed, and building soundness criteria were examined in great detail. A public information handout was written to aid applicants and consultants in the preparation of soundness reports and to provide consistency in the review of those reports by staff. A historic information form was provided for buildings greater than 50 years of age, so that impacts on historical resources could be considered in a meaningful way.

2006 (and beyond) Coming full circle in two decades, the Commission will again consider codification of controls for non-CU-required residential demolitions.

A RECENT HISTORY OF RESIDENTIAL DEMOLITION REVIEW

(continued from two page Staff Executive Summary March/May 2007, Exhibit 1 on "Proposed Planning Code Amendments to Require Conditional Use of Discretionary Review of Certain Applications to Remove Residential Units" Case No. 2006.0070ET)

March 2007	CPC Hearing on March 22, 2007 on Residential Demolitions. Resolution 16700. Continued to May 17, 2007.
March 2007	Tehlirian et al v. CCSF (Court of Appeal, First District Division 2, California).
May 2007	CPC Hearing on May 17, 2007 on Residential Demolitions. Passed by Commission unanimously. Resolution 17428 sent to Board of Supervisors with policy recommendations.
April 2008	Ordinance 69-08 passed on April 15, 2008 by full Board. Signed into law by Mayor Newsom effective May 18, 2008 "codifying Planning Commission policy" as new Planning Code Section 317, with subsections for TTD.
March 2009	First Code Implementation Document (CID) published. Draft approved by Commission at hearing on March 26, 2009. "Zoning Controls on the Removal of Dwelling Units" details implementation rules for Section 317, including Demo Calcs' values used to determine TTD. Also sets RH-1 value for Demonstrably Unaffordable Housing at $1.342 M.
May 2009	125 Crown Terrace Appraisal.
Fall 2009	Supervisor Mirikarimi legislation. A proposed revision to Section 317 in aftermath of Drew School demolition of three Rent-Controlled apartments.
October 2010	Second Code Implementation Document, "Zoning Controls on the Removal of Dwelling Units" published.
(2007-2014)	Approximate period of the "Great Recession".

Continuation of Staff Timeline by G. Schuttish, Noe Valley Resident October 22, 2020

August 2013	RH-1 Demonstrably Unaffordable Value remains at $1.342 M.
February 2014	Third Code Implementation Document, "Zoning Controls on the Removal of Dwelling Units" published.
March 2014	RH-1 Demonstrably Unaffordable Value raised to $1.506 M.
(2013-2015)	Speculative projects that are extreme Alterations but that look just like Demolitions begin occurring in Noe Valley.
Nov 2015	RH-1 Demonstrably Unaffordable Value raised to $1.63 M.
Dec 2015	Staff determines that 40 to 50 percent of sample of projects in Noe Valley should have been reviewed as Demolitions based on Section 317, TTD Demo Calcs.
August 2016	RET begins public outreach. Proposed ending TTD and a Planning Code definition of Demolition.
Fall 2016-2017	CPC hearings/public outreach on Residential Expansion Threshold. Expansions defined by FAR formulae.
October 2017	Residential Flat Policy implemented to thwart merger loophole of Section 317 (b) (7) that leads to loss of housing.
Dec 2017	RET withdrawn by Staff.
Dec 2017	RH-1 Demonstrably Unaffordable Value raised to $1.9 M.
Apr 12, 2018	Joint Hearing with BIC/Planning on Residential Demolitions.

Continuation of Staff Timeline by G. Schuttish, Noe Valley Resident October 22, 2020

(2018-2019)	"Controls on Residential Demolition, Merger, Conversion and Alteration" aka Board File No. 181216. Proposes ending Tantamount to Demolition (TTD); increases Enforcement, etc.
June 20, 2019	Joint Hearing with BIC/Planning on Board File No. 181216.
July 2019	RH-1 Demonstrably Unaffordable Value raised to $2.2 M.
Oct 2019	Board File No.181216 "officially dead" per Board Staffperson.
Jan 2020	Responding to Commissioner question, Director Rahaim says Staff working on Demo Calcs.
Spring 2020	Public Health crisis due to Pandemic. Another "Great Recession" begins amidst extreme income inequality.
Apr/May 2020	Demonstrably Unaffordable Housing exemption in Section 317 (d) (3) (A) removed from Planning Code (Board File No. 200142). Could allow projects to be designed just under TTD Demo Calcs' threshold per Staff Executive Summary.
June 2020	Fourth Code Implementation Document, "Zoning Controls on the Removal of Dwelling Units" published.
October 2020	Director Hillis announces to Commission that Staff work ongoing re: Demo Calcs. Proposal intro: "TBD".
(2015-Present)	Extreme Alterations ongoing. Entitlements sold. Speculation continues. Demo Calcs never adjusted or "reduced" per Code Section 317 (b) (2) (D) unlike Section 317 (d) (3) (A). *"Coming Full Circle...."* as noted by Staff in 2006.

Section 317 (b) (2) (D): "The Planning Commission may *REDUCE* the above numerical elements of the criteria in Subsections (b) (2) (B) and (b) (2) (C), by up to 20% of their values should it deem that *ADJUSTMENT* is necessary to implement the intent of the Section 317, *to conserve existing sound housing and preserve affordable housing"*

SCENARIO #1

Existing Demo Calcs in Subsections (b) (2) (B) and (b) (2) (C) 2009 - Today

B 1	B 2	C 1	C 2
>50%	**>65%**	**>50%**	**>50%**

One Adjustment with a Reduction of 10%

>45%	>58.5%	>45%	>45%

Second (Further) Adjustment with another Reduction of 10%
(values below based on first adjustment of 10%) above)

>40.5%	>52.65%	>40.5%	>40.5%

SCENARIO #2

One Adjustment with Reduction of 20% (Max Allowed by Code)

>40%	>52%	>40%	>40%

Second (Further) Adjustment of 5% Reduction from the 20% Reduction Above

>38%	>49.5%	>38%	>38%

OR

Second (Further) Adjustment of 10% Reduction from the 20% Reduction Above

>36%	>46.8%	>36%	>36%

Section 317 (b) (2) (D): "The Planning Commission may *REDUCE* the above numerical elements of the criteria in Subsections (b) (2) (B) and (b) (2) (C), by up to 20% of their values should it deem that *ADJUSTMENT* is necessary to implement the intent of the Section 317, *to conserve existing sound housing and preserve affordable housing"*

SCENARIO #3

Existing Demo Calcs in Subsections (b) (2) (B) and (b) (2) (C) 2009 - Today

B 1	B 2	C 1	C 2
>50%	**>65%**	**>50%**	**>50%**

One Adjustment with a Reduction of 5%

>47.5%	>61.75%	>47.5%	>47.5%

Second Adjustment with a Further Reduction of 10%
(values below based on first adjustment of 5%)

>42.75%	>55.6%	>42.75%	>42.75%

Note:
Obviously, there are other scenarios possible.
It is not impossible to imagine that one of the four values could have been reduced separately from the other three, or that just the C numerical values could have been reduced and not the B values.
Perhaps Scenario #3 is the most realistic if this ability to adjust the Demo Calcs had come back to the Commission....it would have been putting a toe into the water to test Section 317. Instead the values have remained stagnant and static.
Scenario #2 warrants attention however.
And the tool of the Demo Calcs available per Section 317 (b) (2) (D), to prevent Alterations that become Demolitions, but allowing for reasonable Alterations which was the original intent of Section 317 Tantamount to Demolition definitions, has never been put to use.

Section 317 (b) (2) (D): "The Planning Commission may *REDUCE* the above numerical elements of the criteria in Subsections (b) (2) (B) and (b) (2) (C), by up to 20% of their values should it deem that *ADJUSTMENT* is necessary to implement the intent of the Section 317, *to conserve existing sound housing and preserve affordable housing"*

The above "Scenarios" were sent to the Commission on March 2021.

Previously in a letter to the Commission in June 2019 that had the Scenario shown below. The thrust of this Scenario below, which reduced the values by adjusting them on a yearly basis was tied to the Zoning Administrator rapidly adjusting the values in a three year span in the RH-1 under the "Demonstrably Unaffordable Clause" in Section 317 which was eliminated by the Board of Supervisors in June 2020. These years saw a rapid escalation in prices across the City.

Here are the RH-1 Values with Timeline Adjusted by the Zoning Administrator

2009: $1.342 million
2014: $1.506 million
2015: $1.630 million
2017: $1.9 million
2020: $2.2 million

June 2019 Proposal to reduce values per Section 317 (b) (2) (D) by full 20% over 3 years

B 1	B 2	C 1	C 2
>50%	**>65%**	**>50%**	**>50%**
	year one		
>40%	>52%.	>40%	>40%
	year two		
>32%.	>41.69%	>32%	>32%
	year three		
>25.6%	>33.28%	>25.6%	>25.6%

June 10, 2019

President Myrna Melgar
San Francisco Planning Commission
1650 Mission Street
San Francisco, California

Dear President Melgar:

This letter has two requests concerning Demo Calcs.

First, that the Planning Commission adjust the Demolition Calculations (aka "values") as defined at Planning Code Section 317 (b) (2) (B) and Planning Code Section 317 (b) (2) (C).

And second, the Planning Commission ask the City Attorney if the Commission can further adjust the Demolition Calculations to align with the three adjustments to the values that the Zoning Administrator has made regarding Administrative Approval of Demolitions over the past five years.

Adjusting Demo Calculations per Section 317

Please see Part 7, page 27 of *"Zoning Controls on the Removal of Dwelling Units, A San Francisco Planning Code Implementation Document, October 2010"*. The "values" of the Demo Calcs are also defined here. Regarding the Demo Calcs it says,

> *"The following values are subject to non-legislative updates* ***and may be adjusted periodically by the Planning Commission to further the efficacy*** *of Section 317, in order to promote the objectives of the General Plan and Planning Code".*

And what is that efficacy? As it says in Section 317 (b) (2) (D):

> *"...to conserve existing sound housing and preserve affordable housing."*

I know that you and the other Commissioners understand this issue. All I would add is that there have been many extreme alterations over the past four to five years. Maybe even longer. These alterations have used the current Demo Calcs to their Project Sponsor's advantage and are masking the fact that they really are Demolitions. Whether it is called "Tantamount" or "DeFacto", the outcome is the same — no efficacy for promoting the *objectives*.

Previously I submitted to the Commission for the record a list of over 70 projects, mostly in Noe Valley that are with a few exceptions, speculative projects that have had exponential increases from the pre-work sale of the property to the post-work sale of the property, with an average increase of $3 million+. Additionally, back in December of 2015, Commissioner Richards and Staff looked over a sample of five projects in Noe Valley. At that time, according to Staff's analysis, 40% of the projects from the sample should have been reviewed as actual Demolitions, not as Alterations.

The Commission has the right and may seize the reins and make an adjustment per Section 317 (b) (2) (D) regardless of any legislation that may or may not be coming over from the Board. The Commission has never adjusted the values of the Demolition Calculations since Section 317 was enacted....although I don't know why there is any reason that you could not adjust them on the Consent Calendar?

While I did not agree with the RET because it did not have a definition of Demolition, I am sorry that it was withdrawn. At least there would have been a debate over the past year and a half, instead of nothing.

Further Adjustment to Demolition Calculations

I am also asking that the Commission request the City Attorney to issue an opinion as to whether or not the Commission can adjust the Demo Calcs beyond the amount defined by the values in Section 317 (b) (2) (B) and Section 317 (b) (2) (C).

The Zoning Administrator has adjusted the values for the RH-1 at least three times since Section 317 was added to the Planning Code. (There have likely been more times than three* but the three that are published, I submitted previously for the Record during General Public Comment). Any proposed Demolition in the RH-1 could receive Administrative Approval from the ZA with an official appraisal, if that appraisal is greater than the dollar amount of the value at that time. In March 2014 the value was $1.506 million; by November 2015 the value was $1.63 million and the value was most recently increased to $1.9 million in December 2017. According to recent correspondence with Mr. Teague the value will be increased again shortly.

Why should the Planning Commission further adjust the values for the Demo Calcs to "catch up" to the adjustments the Zoning Administrator has made to the RH-1 values since 2014 and ***"...to further the efficacy of Section 317..."***?

One reason is that the original idea for what is nicknamed "the Pacific Heights Exemption" was that some RH-1 neighborhoods were more *naturally unaffordable* and that a Demolition in these neighborhoods would not have an effect on the intent of Section 317 because some of these zoned neighborhoods were already expensive and affordable housing *would not* be lost by approving a Demolition. By making further adjustment to the Demo Calcs the Commission could better protect the more *naturally affordable* neighborhoods and homes from Demolitions masked as Alterations regardless of the underlying zoning just as the Zoning Administrator does in the RH-1 neighborhoods that may still be *naturally affordable*.

Another reason is that prior to March 2014, I cannot find any officially published listing of the value for the RH-1*. However, I have attached a letter concerning the request for a Section 317 exemption for the Demolition of 125 Crown Terrace dated April 2009. According to the letter at that time *"properties containing single-family dwellings must be valued at $1.54 million or more to be exempt from this ordinance"*. Putting aside the later permit history at 125 Crown Terrace, the attached letter concerning its appraised value suggests that the values in San Francisco were flat (or even fell) for quite a long period of time (in parallel with the economic crisis and recovery for those years 2008 to 2014). However the recent rapid rate of increase of the RH-1 value as adjusted by the ZA *three times* since 2014 illustrates the affordability crisis....and the highly speculative nature of the market. This should be offset by further adjusting the values of Demo Calcs by the Planning Commission as Section 317 intended.

Another reason for further adjustment to the Demo Calcs by the Commission is that Part 7 of the Periodic Adjustment to the Criteria includes both criteria for the Commission's adjustments and the criteria for the Zoning Administrator's adjustments to the values on the same Part 7, page 27 of the Code Implementation Document (CID). I discussed this history of both of these values on May 6, 2019 hearing during General Public Comment and submitted my testimony which is in the approved Minutes.

Another reason is that in the original legislation as passed by both the Planning Commission and the Board of Supervisors, Section 317 (d) (3) (A) regarding the adjustment of the values for

the RH-1 was to have the adjustment made by the Planning Commission and not the Zoning Administrator. This language in the Code has not changed and still says that the Planning Commission makes the adjustment. The Code Implementation Document gives the ZA this job of making the actual adjustment in the document. (The CID is dated October 2010 which says the ZA makes the adjustments, while the letter on Crown Terrace from the ZA is dated a year and a half earlier on April 29, 2009. However Section 317 (d) (3) (A) does grant the authority to the Planning Commission, just as it does in Section 317 (b) (2) (D). Section 317 was finalized and signed by Mayor Newsom on April 17, 2008. The powers in Section 317 to adjust all values seem to be linked to the Planning Commission. The rationale to adjust is linked.

Another reason is that since the new ADU legislation there are technically no more RH-1 zoned neighborhoods. This came up in the Commissioner's discussion at the June 6th at General Public Comment. The Commission needs to recalibrate the values overall and catch up by enacting further adjustments.

The most important reason for further adjustments is the original intent of Section 317. For the past five years housing in San Francisco has been besieged by the boom economy or as some like to call it, "the money bomb". Mitigating this impact and catching up with the original intent of Section 317 to ***"....conserve exciting housing and preserve affordable housing"*** is more than necessary.

In addition to the 125 Crown Terrace letter, I am attaching my work sheet of what the Demo Calcs could be, whether adjusted once or three times. These numbers are based on the maximum adjustments to Section 317 (b) (2) (B) and Section 317 (b) (2) (C) as allowed by Section 317 (b) (2) (D). The third attachment that the Commission may find helpful, as well as historically import is from an unpublished case from the Court of Appeal, First District, Division 2, California. It is entitled, "Ara TEHLIRIAN et al, Plantiffs and Appellants, v. City and County of San Francisco, Defendant and Respondent; Jose Morales, Real Party in Interest and Respondent. It concerns the issues at the heart of this request for a further adjustment to the Demolition Calculations by the Planning Commission.

Closing

It took the better part of the first decade of the 21st century to get an Ordinance passed that created Section 317. Section 317 has its faults, but the intent is very sound. There was no major opposition to it as best I can tell from the record when it was before decision makers more than a decade ago. Adjusting the values of the Demo Calcs in 2019 would be a good thing. Please consider adjusting them at least once and please consider asking the City Attorney if you may use your powers as a Planning Commission to go even further.

Sincerely,

Georgia Schuttish
460 Duncan Street

cc: Commission Vice President Koppel; Commissioner Moore; Commissioner Fung;
Commissioner Johnson; Commissioner Richards; Commissioner Hillis
Deputy City Attorney Kristen A. Jensen; Deputy City Attorney Kate Stacy

att: Letter re: Crown Terrace from L. Badiner to A. Brown; 4/29/2009
Work Sheet on Demo Calcs (G. Schuttish)
Tehlirian v. City and County of San Francisco (WestlawNext) © 2016 Thomson Reuters

2007 WL 779353
Not Officially Published
(Cal. Rules of Court, Rules 8.1105 and 8.1110, 8.1115)
Only the Westlaw citation is currently available.

Court of Appeal, First District, Division 2, California.

Ara TEHLIRIAN et al, Plaintiffs and Appellants,
v.
CITY AND COUNTY OF SAN FRANCISCO, Defendant and Respondent;
Jose Morales, Real Party in Interest and Respondent.

No. A112246. | (San Francisco City and County Super. Ct. No. 505035). | March 16, 2007.

Attorneys and Law Firms

James Brandan Kraus, Andrew Mayer Zacks, Zacks Utrecht & Leadbetter P.C., San Francisco, CA, for Plaintiffs and Appellants.

Susan S. Cleveland, Sarah Ellen Owsowitz, Office of the City Attorney, San Francisco, CA, for Defendant and Respondent.

Raquel Fox, Tenderloin Housing Clinic, Inc., San Francisco, CA, for Real Party in Interest and Respondent.

Opinion

LAMBDEN, J.

*1 Appellants Ara Tehlirian, Berg Tehlirian, and ABT LLC (petitioners) [1] seek reversal of the superior court's denial of their petition for writ of administrative mandate, as well as an order directing issuance of a writ to the San Francisco Board of Appeals instructing them to reconsider petitioners' permit application and make legally relevant findings. We affirm the superior court's denial of their petition.

BACKGROUND

Petitioners own an old residential duplex located a 572-572A San Jose Avenue in San Francisco, purchased by Ara and Berg Tehlirian in 1994. The duplex consists of two units, one on the ground floor and one on the second floor, each containing two bedrooms and one bath, and measuring approximately 750 square feet. Real party in interest Jose Morales, 76 years old as of June 2005 and a self-described "low-income senior," has resided in one of the two residential units in the building since 1965; the other unit has been vacant during this dispute.

In November 2002, petitioners, through their architect, Best Design and Construction, submitted a building permit application to the Department of Building Inspection for the City and County of San Francisco (City). [2] The proposed project would remove the existing brick foundation, convert the ground floor residential unit into a two-car garage and storage facility, renovate the second floor residential unit, and add a third floor, to be used as a second residential unit. The project would add 335 square feet to the ground floor, 368 square feet to the second floor, and a 1,038 square foot third floor, extending the building in the front and back.

Morales requested the Planning Commission (Commission) conduct a discretionary review of petitioners' application. The subsequent Planning Department staff report to the Commission summarized petitioners' proposed project as follows:

"The proposed project aims to convert the first floor into a garage (currently it is used as a dwelling unit), in order to provide parking for the two dwelling units located above. The second floor the existing dwelling unit, the entryway, [*sic*] and provides a horizontal rear addition of 135 square feet. It proposes a horizontal front addition of 625 square feet and a new bay window. This second floor unit has two bedrooms and two bathrooms. The proposal also includes a vertical addition, a new third floor to house the second dwelling unit. The unit has two bedrooms and two bathrooms and is larger than the existing dwelling unit by approximately 300 square feet. The existing units measure approximately 750 square feet. The re-modeled units measure approximately 1,050."

According to the Planning Department staff summary, Morales was "concerned that his displacement will affect his health, he will incur relocation costs, and that the proposal

will result in increased rental costs. The tenant is also concerned that the project would reduce the city's affordable housing stock."

*2 After further analysis, the Planning Department staff reported: "There are concerns that this project is a demolition. The Department of Building Inspection has made the determination that this project is an alteration, not a demolition. Therefore, the Planning Department has received the application as an alteration." The staff recommended that the Commission not take discretionary review and approve the project as proposed. The Commission subsequently conducted a discretionary review of the project and denied the building permit application in October 2003 by a four-to-one vote, based on the following findings:

"The proposed project is not a major alteration but a de facto demolition; [¶] The project would result in the de facto loss of affordable housing by improving and expanding the existing units that are currently accessible to lower-income tenants because of their size and relative lack of amenities; [¶] The proposal might result in the displacement of an elderly man with limited income; and [¶] Any conditions of approval attached to the building permit relating to rental rates, relocation, tenant's right of return, and other arrangements made between the landlord and tenant would not be enforceable by the [Commission]."

Petitioners appealed to the Board of Appeals (Board) on the ground that the Commission erred in its determination that the alterations were a de facto demolition. In February 2004, the Board heard statements from, among others, Ara Tehlirian, Morales, and the public. Ara Tehlirian stated that he and his family wanted to move to San Francisco and live on the premises in order to be closer to family, and needed to make the alterations called for by the project in order to do so. The Board voted three to two to overrule the denial and grant the permit with conditions as presented by petitioners, which vote was insufficient to overturn the denial. After a rehearing in November 2004, the Board voted three to two to uphold the denial. The Board did not make specific findings regarding either ruling.

Petitioners filed a petition for a writ of administrative mandate in superior court pursuant to Code of Civil Procedure section 1094.5. The court denied the writ in September 2005, finding that the Board had substantial evidence before it that the project would impact the City's health, safety, and welfare by reducing its stock of affordable housing.

This timely appeal followed. We have granted each party's request for judicial notice of certain documents. These include excerpts from the Housing Element of the City's General Plan and documents related to petitioners' notice of withdrawal of the rental unit occupied by Morales pursuant to the Ellis Act, which we discuss further, *post.*[3]

DISCUSSION

On appeal, petitioners argue that (1) the board "failed to proceed in a manner required by law because it failed to make findings in affirming the Commission's decision to deny the permit"; and (2) "there is no substantial evidence to support the findings that the proposed remodel is either a demolition or would negatively affect the City's affordable rental housing stock." Neither argument has merit.

I. *The "Findings" Issue*

*3 Petitioners argue that the Board failed to make findings in this case, constituting an abuse of discretion under Code of Civil Procedure section 1094.5, citing *Topanga Assn. for a Scenic Community v. County of Los Angeles* (1974) 11 Cal.3d 506, 515 (***Topanga***) and *Hadley v. City of Ontario* (1974) 43 Cal.App.3d 121, 127-129 (***Hadley***).)

Code of Civil Procedure section 1094.5, subdivision (b) states in relevant part that "[a]buse of discretion is established if the respondent has not proceeded in the manner required by law, the order or decision is not supported by the findings, or the findings are not supported by the evidence." This section "clearly imports a duty on the part of the administrative agency to make findings as a basis for judicial review." (*Hadley, supra,* 43 Cal.App.3d at p. 127, citing *Topanga, supra,* 11 Cal.3d at pp. 515-517.) However, this duty has not been extended to appellate bodies reviewing administrative agency decisions. (*Ross v. City of Rolling Hills Estates* (1987) 192 Cal.App.3d 370, 376 (***Ross***) [stating, "[b]y affirming the Commission's decision, the Council in effect adopted its findings"]; *Carmel Valley View, Ltd. v. Board of Supervisors* (1976) 58 Cal.App.3d 817, 823 (***Carmel Valley View***) [the action of the board of supervisors in effect adopted the findings of the Commission].)

Here, the Commission made specific findings, which we quote in the discussion portion above. These findings "are

sufficient to apprise the parties and the court of the basis" for the City's action here. (*Ross, supra,* 192 Cal.App.3d at p. 377.) The Board, by upholding the Commission's ruling, in effect adopted these findings. (*Id.* at pp. 376-377; *Carmel Valley View, supra,* 58 Cal.App.3d at p. 823.) Petitioners' argument is without merit.

II. *The Substantial Evidence Issue*

A. *Substantial Evidence Standard of Review*

The parties agree that because the right at stake is not a fundamental right, we apply a substantial evidence standard of review (*Strumsky v. San Diego County Employees Retirement Assn.* (1974) 11 Cal.3d, 28, 44-45), doing so to review the Board's decision, not the trial court's. (*Auburn Woods I Homeowners Assn. v. Fair Employment & Housing Com.* (2004) 121 Cal.App.4th 1578, 1583 (*Auburn*).) In reviewing the validity of the Board's decision, Code of Civil Procedure section 1094.5 requires we inquire into whether the Board " 'acted in excess of its jurisdiction and whether there was any prejudicial abuse of discretion.' " (*Auburn,* at p. 1583.) Abuse of discretion is established if the Board " 'failed to proceed in the manner required by law or its finding ... is not supported by substantial evidence in light of the whole record.' " (*Ibid.*)

We exercise the same function as the trial court and must decide if the Board's findings were based on substantial evidence. (*Auburn, supra,* 121 Cal.App.4th at 1583.) We do not reweigh the evidence, and must view the evidence in the light most favorable to the Board's findings and indulge in all reasonable inferences in support thereof. (*Ibid.*) " ' "We may not isolate only the evidence which supports the administrative finding and disregard other relevant evidence in the record. [Citations.] On the other hand, neither we nor the trial court may disregard or overturn the [Board's] finding ' "for the reason that it is considered that a contrary finding would have been equally or more reasonable" ' " ' " (*Ibid.*) We must uphold the Board's decision " 'unless the review of the entire record shows it is so lacking in evidentiary support as to render the decision unreasonable.' " (*Ibid.*) " 'Substantial evidence is defined as: " 'relevant evidence that a reasonable mind might accept as adequate to support a conclusion, ...' " [Citation] or evidence of " ' "ponderable legal significance ... reasonable in nature, credible, and of solid value." ' " ' " (*Auburn, supra,* 121 Cal.App.4th at 1583.)

*4 Moreover, if the Board committed errors of law, we are not bound by its legal conclusions. (*Auburn, supra,* 121 Cal.App.4th at 1583.)

B. *The Scope of Administrative Review*

San Francisco administrative authorities exercise discretion in the review of permit applications pursuant to San Francisco Business and Tax Regulations Code, article I, section 26, subdivision (b), which provides: "[I]n the granting or denying of any permit ... the granting ... power may take into consideration the effect of the proposed business or calling upon surrounding property and upon its residents, and inhabitants thereof; and in granting or denying said permit ... may exercise its sound discretion as to whether said permit should be granted ... denied or revoked."

Article I, section 26 of the San Francisco Business and Tax Regulations is "comprehensive language affecting the issuance of *all* permits sought under the authority of the relevant San Francisco Charter and ordinance provisions [that] in plain terms vests the granting power with a 'sound discretion' generally." (*Lindell Co. v. Board of Permit Appeals* (1943) 23 Cal.2d 303, 311; see also *Guinnane v. San Francisco City Planning Com.* (1989) 209 Cal.App.3d 732, 738, fn. 4 (*Guinnane*); *Martin v. City and County of San Francisco* (2005) 135 Cal.App.4th 392, 406-407 (*Martin*).)

Furthermore, "[s]ection 26 ... vest[s] administrative authorities with very broad discretion to decide whether and on what conditions an applicant will be granted a permit. And if the application is for a building permit, the fact that the applicant's project complies with zoning ordinance and building codes does not restrict the scope of that discretion." (*Martin, supra,* 135 Cal . App.4th at p. 400; accord, *Guinnane, supra,* 209 Cal.App.3d at p. 736 ["compliance with the zoning laws and building codes did not entitle [the applicant] to a building permit as a matter of course"].) Thus, the Commission has the discretion to reject a permit simply because a proposed residential development is "unsuitable for the indicated location." (*Guinnane, supra,* 209 Cal.App.3d at p. 736.) As Division Four of this District recently stated:

"[I]t is well established that section 26 administrative discretion is not cabined by specific criteria that may be set forth in city codes or ordinances. Instead, that discretion is informed by public interest, encompassing

anything impacting the public health, safety or general welfare." (*Martin, supra*, 135 Cal.App.4th at p. 407.)

Under the City's Charter, the Board of Appeals has broad discretionary review powers. Section 4.106 of the Charter of the City and County of San Francisco (Charter section 4.106) authorizes the Board of Appeals to hear and determine appeals arising from the grant or denial of a permit, and to take the public interest into account in doing so. It states in relevant part:

"The Board shall hear and determine appeals with respect to any person who has been denied a permit ... or who believes that his or her interest or the public interest will be adversely affected by the grant [or] denial ... of a ... permit." (Charter, § 4.106, subd. (b).)

*5 Charter section 4.106, subdivision (d) states:

"After hearing and necessary investigation, the Board may concur in the action of the department involved, or by the affirmative vote of four members (or if a vacancy exists, by a vote of three members) overrule the action of the Department.

"Where the Board exercises its authority to modify or overrule the action of the department, the board shall state in summary its reasons in writing."

Thus, "both the planning commission (under § 26) and the board of permit appeals (under § 3.651 of the city charter) [4] are authorized to exercise independent discretionary review of a building permit application, the final authority being reposed in the board. Further ... such review is not confined to a determination whether the applicant has complied with the city's zoning ordinances and building codes." (*Guinnane, supra*, 209 Cal.App.3d at p. 740, fn. added.) "The board generally enjoys ' "complete power to hear and determine the entire controversy, [is] free to draw its own conclusions from the conflicting evidence before it and, in the exercise of its independent judgment in the matter, affirm or overrule...." ' [Citations.] However, that power must be exercised within the bounds of all applicable city charter, ordinance and code sections, and any action on its part that exceeds these bounds is void." (*City and County of San Francisco v. Board of Permit Appeals* (1989) 207 Cal.App.3d 1099, 1104-1105.)

C. The Board's Ruling

Petitioners contend no substantial evidence supported the Board's finding that their project was a demolition or would result in the loss of "affordable" housing, either to Morales or the City at large. This is incorrect.

1. "De Facto Demolition"

The Commission's findings referred to the project as resulting in a "de facto demolition." It is not completely clear whether the Commission's use of this phrase was intended to find that the project constituted a "demolition" as that term is defined under municipal law, rather than an "alteration." [5] However, the record indicates that the Board reviewed the appeal with this in mind, as the Board's Vice President Sugaya stated at the November 2004 rehearing, "I still believe that this is an *illegal demolition* and that's what we're voting on." (Italics added.) Accordingly, we review the record to determine whether substantial evidence was presented to support the finding that the project was a "demolition" as that term is defined under municipal law. We conclude that such evidence was presented.

The City's Building Code defines "demolition" for the purpose of determining whether an unlawful residential demolition has occurred. It is defined as "the total tearing down or destruction of a building containing one or more residential units, or any alteration which destroys or removes ... principal portions of an existing structure containing one or more residential units." (S.F. Building Code, § 103.3.2. [6])

*6 The term "principal portion" is defined as "that construction which determines the shape and size of the building envelope (such as the exterior walls, roof and interior bearing elements), or that construction which alters two-thirds or more of the interior elements (such as walls, partitions, floors or ceilings)." (S.F. Building Code, § 103.3.2.)

Thus, under the City Building Code, a "demolition" includes an alteration which destroys or removes principal portions of an existing structure containing one or more residential units, which "principal portions" include "a construction which determines the shape and size of the building envelope," including, but not limited to, exterior walls, roof, and interior bearing elements. Petitioners' proposed project meets this definition of "demolition ." Petitioners' plans, rather than being "fairly modest" as petitioners claim, indicated that the project would, among other things, replace the existing brick

foundation, convert the first floor 750 square foot residential unit into an expanded two-car garage, renovate and expand the second floor rental unit occupied by Morales from 750 to 1,050 square feet, and add an entirely new third floor on top of the building, where a 1,050 square foot modern residential unit would be constructed. It can be reasonably concluded from these plans that both the shape and size of the building envelope would be significantly altered, and that "principal portions" of the building would be removed or destroyed (such as the second floor roof, a significant portion of the building "envelope" for the horizontal expansion of the first and second floors, the first floor residential unit, some portion of the first floor exterior for cars to enter the new garage, and the existing foundation).

Furthermore, there was substantial evidence that two-thirds or more of the interior gravity bearing walls would be removed by the project. A letter by Stuart Stoller, a senior associate at SGPA, an architecture and planning firm, was submitted to the Board, [7] in which Stoller disagreed with the estimate by Tehlirian's own architect, Charles Ng, that "less than 57% of the existing bearing walls" would be removed in the proposed construction. Stoller opined, based on his review of petitioners' "existing wall diagram," that the diagram did not take into consideration certain specified aspects of the premises or address certain "potential" requirements which, if considered, "could likely indicate that 33% or less of the existing wall structure will be retained." Stoller's letter called into question whether or not two-thirds of the interior gravity load bearing walls would be removed in the course of the project.

A letter by licensed contractor Alan Klonsky was also submitted to the Board. Klonsky reviewed Mr. Morales's rental unit and certain unspecified project plans. He stated:

"Although the project drawings are labeled as vertical and horizontal additions, in reality, the scope of work constitutes a demolition and the construction of a new building. At ground level, now occupied by the second unit, a garage is proposed along with the foundation and structural upgrades required by the construction of a 3-story building. Over the garage 2 floors of new construction will be built with an increase in the footprint of the building to current allowable lot coverage. The 2 new units will be significantly larger than the existing apartments. [¶] ... [¶] This project will require the existing building to disappear as a new building takes its place. Any remnant of the original construction will be symbolic at best. It appears to me that proposed scope of [*sic*] far exceeds the definition of a remodel."

*7 Based on this substantial evidence, the Board could reasonably conclude that the project, rather than calling for "alterations" as claimed by petitioners, was in fact ("de facto") a "demolition" as that term is defined by the City's Building Code. The plans called for significant changes to the shape and size of the building by the destruction or removal of significant principle portions of it. Klonsky's views, while not discussing the City's definition of demolition, confirmed these dramatic changes. The Board also could reasonably rely on Stoller's letter to conclude that the project more likely than not would destroy two-thirds or more of the linear feet of gravity load bearing walls, which would also constitute a "demolition" as defined in the City's Building Code.

Petitioners argue that we should disregard Stoller's letter as "soundly defective," amounting to "merely speculation and unsubstantiated opinion," because Stoller's qualifications are unclear, he examined only an "existing wall diagram" without showing how he could rely on it for his conclusions, and stated his conclusions in an unacceptably equivocal fashion (using such terms as "could" and "likely").

Petitioners' arguments lack merit. The Board could reasonably infer that a senior associate of an architecture and planning firm has the expertise to evaluate the materials Stoller reviewed and opine about them. Indeed, Ng's own qualifications appear to be less than what petitioners represent, i.e., a "licensed architect." [8] The evidence also strongly suggests that Stoller and Ng relied on the same or a very similar document in stating their views of the proposed project, since Stoller refers to "the 'Existing Wall Diagram' submitted by the project sponsor" and Ng refers to an "existing walls diagram." Neither explains how he could rely on such a document for his conclusions.

As for the quality of Stoller's opinion, his statements were not conclusory, and are a far cry from those discussed in the cases petitioners cite. (See *Gentry v. City of Murrieta* 1995) 36 Cal.App.4th 1359, 1421-1422 [expert found no effect on groundwater except for a "possible exception," and relied on unspecified information]; *Drouet v. Superior Court* (2003) 31 Cal.4th 583, 598 [referring to a "snippet" of a Senate Committee analysis in discussing a statute's interpretation, merely identified as "sufficiently tentative and equivocal to caution us against relying too heavily on [it]"]; *Citizen Action to Serve All Students v. Thornley* (1990) 222 Cal.App.3d 748,

756 [referring to a "conclusory" comment regarding what "might" occur as speculative and not substantive evidence]; *Keeton v. Workers' Comp. Appeals Bd.* (1979) 94 Cal.App.3d 307, 312, fn. 2 [merely referring to a "conclusory" doctor's report].) Stoller identified specific areas of the structure and potential requirements that factor into his views, and listed five specific items of concern. He used the phrase "could ... indicate" because he reached different conclusions depending on which of his stated items of concern are considered. [9] His use of terms such as "likely" or "potential requirements" to qualify his conclusions is hardly fatal in an expert opinion. They may go to the weight afforded to his opinion, but do not eliminate their merit altogether.

*8 Petitioners also argue that Klonsky's statement is an "unsupported conclusion, especially because it is contrary to the Planning Department's informed determination. Nothing in his conclusion attempted to apply relevant building code standards governing remodel versus demolition." Petitioners miss the relevance of Klonsky's statement, which is to support the conclusion that, practically speaking, the project "demolishes" the old building and places a new, significantly different one in its place, regardless of the Building Code definitions.

Petitioners also argue that we should rely on the Planning Department, which petitioners contend "repeatedly found ... the project *not* a demolition." The record does not support petitioners' contention. The Planning Department stated in recommending that the Commission not take discretionary review: "The Department of Building Inspection has made the determination that this project is an alteration, not a demolition. Therefore, the Planning Department has received the application as an alteration."

Regardless, we will not reweigh the evidence. The Board was entitled to rely on the substantial evidence that the Tehlirian project was a "de facto" demolition, even in the face of contrary evidence.

In their reply brief, petitioners also distinguish the City's and Morales's reference to a "de facto demolition" from a "de jure demolition," arguing that it constitutes an "admission" that there is no evidence of the latter, and that the Board acted without authority to reject a permit application for a mere "de facto demolition." To the contrary, the City argues that "the Project rose to the level of a demolition," and Morales, as he argued before the Board, contends that the "de facto demolition" constituted a "demolition" as the term is defined by the City's Building Code. As we have already stated, Board Vice President Sugaya stated that the Board was considering whether this was an "illegal demolition." In any event, there was substantial evidence that the project called for a "demolition" as that term is defined by the City's Building Code.

2. Affordable Housing

The Board did not abuse its discretion in finding that petitioners' project would eliminate affordable housing from the rental market.

Pursuant to state and municipal law, the Board may consider the need to retain affordable housing in deciding whether to grant or deny permits. "[C]reating affordable housing for low and moderate income families" is a "legitimate state interest." (*Home Builders Assn. v. City of Napa* (2001) 90 Cal.App.4th 188, 195.) "The assistance of moderate-income households with their housing needs is recognized in this state as a legitimate government purpose. (See, e.g., Gov.Code, § 65583, subd. (c)(2) [local communities must set forth in housing elements of their general plan a program that will 'assist in the development of adequate housing to meet the needs of low-*and moderate*-income households' (italics added)].)" (*Santa Monica Beach, Ltd. v. Superior Court* (1990) 19 Cal.4th 952, 970-971.)

*9 Municipal law requires the Board to consider the City's supply of affordable housing in making its decisions. The City's Planning Code section 101.1, subdivision (b)(3), states as a "priority policy" "[t]hat the City's supply of affordable housing be preserved and enhanced," and the City's departments must comply with the Planning Code's provisions in issuing permits. (S.F. Planning Code, § 175, subds. (a), (b).)

Furthermore, the Housing Element of the City's General Plan emphasizes the importance of retaining affordable housing. Objective 2 of the Housing Element states:

"The existing housing stock is the City's major source of relatively affordable housing. It is very difficult to replace given the cost of new construction and the size of public budgets to support housing construction. Priority should be given to the retention of existing units as a primary means to provide affordable housing." (S.F. General Plan, Housing Element (adopted May 13, 2004) p. 145.)

Consistent with this emphasis on retaining affordable housing, Policy 2.1 of the Housing Element discourages the "demolition" of sound existing housing. It states:

"Demolition of existing housing often results in the loss of lower-cost rental housing units. Even if the existing housing is replaced, the new units are generally more costly. Demolition often results in displacement of residents, causing personal hardship and relocation problems. [¶] ... The City should continue to discourage the demolition of existing housing that is sound or can be rehabilitated, particularly where those units provide an affordable housing resource." (S.F. General Plan, Housing Element (adopted May 13, 2004) pp. 145-146.)

Also consistent with this emphasis, Implementation 2.1 of the Housing Element states, among other things, "[t]he feasibility of expanding the demolition definition will continue to be evaluated in order to prevent the loss of housing classified as 'alterations.' " (S.F. General Plan, Housing Element, (adopted May 13, 2004) pp. 145-146.)

The Board's decision to uphold the denial of petitioners' permit application took into account the impact of the project on the City's stock of affordable housing. This was evidenced not only by its implicit adoption of the Commission's findings, but also by Board member Knox's statement at the November 2004 rehearing:

"I'm sensitive to the fact that Mr. Morales would be displaced and ultimately what we are looking at is the denial of the permit, not the fairness of people being able to buy property and make changes. [¶] Or frankly, I don't think we are going to be able to address the lack of affordable housing in San Francisco in this Board, with this Board in any case, including this case. [¶] As long as there is the private ownership of property in a limited geographical area, housing is going to be really expensive in this town. [¶] But I am not inclined to grant the appeal and overturn the denial of the permit."

*10 There was substantial evidence that the enlarged, renovated second floor rental unit would become unaffordable to persons in Morales's modest circumstances. Morales stated to the Board at the February 2004 hearing that he already was spending "more than 30 percent" of his income in rent, which was approximately $873 a month as of July 2005. Although petitioners eventually made certain promises to accommodate Morales's income limitations and displacement concerns as a part of their appeal to the Board, [10] Ara Tehlirian acknowledged to the Board during the February 2004 hearing that he was encouraging Morales to apply for government housing assistance and to consider taking on a roommate to pay for rent increases. Among other things, Tehlirian stated:

"[I]'d be taking a hit on the existing costs, but I'll take on that extra burden for a period of time, a reasonable period of time, until such time that the tenant can perhaps get in a roommate that can pay him several hundred dollars a month, or assistance where the government will try to assist him and by being able to get that assistance that will take some of the burden off of me."

Thus, whether or not petitioners accommodated Morales's concerns and limitations for a time, this testimony suggested that the new unit would no longer be affordable to a person in Morales's circumstances.

There was also substantial evidence that the project would remove the existing first floor, 750 square foot residential unit from the housing market as well, and that it, too, was of a more affordable nature than its "replacement." Although it was apparently vacant throughout this dispute, its conversion into a parking garage would obviously eliminate it from use. Petitioners' construction of a new third floor for the building, consisting of a modernized, 1,050 square foot residential unit, does not necessarily require its destruction. It is also reasonable to conclude that the modernized and enlarged third floor unit would be significantly more expensive if offered on the rental market.

Petitioners argue that the Board's affordable housing determination was improper for a number of reasons. First, they contend that there was no substantial evidence that affordable housing would be lost to Morales or the City at large. They point to their offer to limit capital improvement pass-throughs to Morales to $43 per month, and to the lack of evidence that the project would result in "luxury" amenities. We think these arguments avoid the obvious. The Board could reasonably conclude based on substantial evidence that the project would eliminate two residential rental units that are affordable to persons of modest circumstances, as we have discussed herein.

Petitioners also assert that Morales's unit in its present state is "perhaps dangerous," and suggest that it may violate the implied warranty of habitability, and contain "defects." Petitioners do not point to anything in the record so indicating,

and there was substantial evidence to the contrary. Klonsky, the licensed contractor, reviewed Morales's living conditions and found he lived "in a small Victorian building that appeared to suffer from deferred maintenance but was far from uninhabitable."

*11 Petitioners argue further that neither the Board nor the Commission are qualified to determine what is affordable housing, and neither body has "authority to prevent property owners from making moderate improvements to their property because doing so would affect the supply of affordable housing." They also insist that there were no standards or evidence of what constituted "affordable housing," or that the project once it completed would not be affordable. These arguments presuppose that petitioners were entitled to approval of their permit application absent some definitive proof to the contrary. As we have already discussed, the Board has broad discretion in granting or denying permits. We see no reason under the circumstances of this case to question the Board's decision that the project would eliminate affordable housing because the term was not precisely defined.

In short, given our deferential standard of review, the City's stated priority of retaining affordable housing and discouraging its "demolition," and the substantial evidence reviewed herein, [11] we cannot conclude that the Board abused its discretion when it denied petitioners' appeal because, as stated in the Commission's findings, the "project would result in the de facto loss of affordable housing by improving and expanding the existing units that are currently accessible to lower-income tenants because of their size and relative lack of amenities."

D. *The Board Did Not Improperly Consider Tenancy-Related Issues*

Petitioners argue that the Board's consideration of the impact of the project on the City's stock of affordable housing was somehow precluded by the Board of Supervisors' creation of the Rent Stabilization and Arbitration Board (Rent Board) and enactment of related laws establishing certain rights and obligations between landlords and tenants (Rent Ordinance), and was beyond the Board's authority under San Francisco Business and Tax Regulations Code, article I, section 26. Petitioners contend that the Board improperly considered "tenancy-related issues," and that allowing the Board to base its decision on considerations regarding affordable housing "would undermine the creation of the Rent Ordinance and usurp the jurisdiction of the Rent Board." This argument also lacks merit.

As we have already discussed, the Board may, pursuant to Charter section 4.106, subdivision (b) of the Charter consider the "public interest" in its review of a permit. Pursuant to San Francisco Business and Tax Regulations Code, article I, section 26, it may review permits with regard to "public health, safety, and general welfare." (*Martin, supra*, 135 Cal.App.4th at p. 407.) Given these provisions and the City's stated priorities regarding affordable housing, the Board was entitled to consider the project's impact on the City's affordable housing stock in its deliberations.

Petitioners argue that the Board acted similarly to the Board in *City and County of San Francisco v. Board of Permit Appeals, supra*, 207 Cal.App.3d 1099, an opinion issued by this court. We disagree. In that case, the court held that the board acted in excess of its jurisdiction when it authorized a third unit for a property zoned for single family use. (*Id.* at p. 1102.) The court concluded that the board had effectively rezoned the property, a legislative act exclusively within the power of the board of supervisors. (*Id.* at p. 1110.) No such "legislating" occurred here. As we have discussed, the Board acted within its authority to review permits, and to consider such things as the public health, safety, and general welfare, and the City's priorities regarding its affordable housing stock, in doing so.

*12 Furthermore, the Board did not decide any issues covered by the Rent Ordinance. The Board did consider the possible impact of the project on Morales, and encouraged negotiations between petitioner and Morales to mitigate that impact. The municipal ordinances allow for the Board's consideration of the project's impact on Morales. (Charter, § 4.106, subd. (b) ["The Board shall hear and determine appeals with respect to any person who has been denied a permit ... or who believes that his or her interest ... will be adversely affected by the grant [or] denial ... of a ... permit"]; S.F. Bus. & Tax Regs.Code, art. I, § 26 ["in the granting or denying of any permit ... the granting ... power may take into consideration the effect of the proposed business or calling upon surrounding property and upon its residents, and inhabitants thereof"].) The Board inevitably considered his tenant circumstances in assessing the project's impact on him, given his status as petitioners' tenant. However, the Board did not decide any issues covered by the Rent Board or the Rent Ordinance. For example, it made no determinations related to Morales's displacement or temporary eviction, his relocation

benefits, the amount of rent to be paid should the project be completed, or the amount of capital improvement pass-through that should be allowed. [12]

E. *Petitioners' Ellis Act Notice*

Petitioners represent that, while this appeal was pending, they invoked their Ellis Act rights pursuant to Government Code section 7060 et seq. and the City's Rent Ordinance, San Francisco Administrative Code section 37.9A, and gave notice to terminate Morales's tenancy and withdraw his unit from the rental market. They contend that, as a result, "a remand should result in a determination that the building no longer contains any rental housing, thus precluding any finding that this project will affect the City's affordable housing stock," and "submit that a writ of administrative mandate should issue compelling the [Board] to make legally relevant findings, which if done, will lead to permit issuance."

The courts review the Board's decision pursuant to Code of Civil Procedure, section 1094.5, based upon the record before the Board at the time it made its decision, with limited exceptions. (Code Civ. Proc., § 1094.5, subd. (e); *Eureka Teacher's Assn. v. Board of Education* (1988) 199 Cal.App.3d 353, 366-367.) We see no reason to consider petitioners' actions and contentions regarding the Ellis Act, other than to determine whether or not this appeal is moot in light of them. We conclude that it is not, as the record indicates that petitioners have extended the date of withdrawal of the unit to April 18, 2007, as indicated by petitioners' May 17, 2006 letter, of which we have taken judicial notice at Morales's request. (See *DeLaura v. Beckett* (2006) 137 Cal.App.4th 542, 547, fn. 4 [determining the merits of a dispute after Ellis Act notice had been given because the notice could still be rescinded].)

*13 The City also argues that we should determine that petitioners' Ellis Act notice cannot effect the Board's decision because "[i]t does not necessarily alter the property's character as 'affordable housing' or change the proposed Project from a demolition to an alteration." These issues also were not before the Board and, therefore, we do not consider them.

F. *Other Arguments by Petitioners*

Petitioners make a number of additional arguments, none of which are persuasive. Petitioners repeatedly allege improprieties that have no support in the record, such as that Morales "called in political favors," the Commission and Board made findings that were "utterly pretextual" and "unfettered whim," and petitioners were "singled ... out solely for political reasons." We disregard these unsupported contentions.

Petitioners also argue that the Board's action effectively bans property owners from making any improvements to their buildings, stating: "If the City's position really is to keep housing affordable by encouraging dilapidation and preventing improvements, this court should order the City to cease issuing residential improvement permits of any kind to anyone. In fact, it should order that all permits already issued be rescinded and that all improvements ever made to any property be removed. That will undoubtedly not only prevent housing from becoming more expensive, it will ensure that it becomes truly affordable."

This hyperbole cannot obscure the substantial evidence of the dramatic overhaul called for in the petitioners' proposed project. Nothing in the record indicates that the Board barred petitioners from making any improvements to their property.

We also disagree with petitioners' assertions in their reply brief that the Board's action was "irrational" and "arbitrary" and against the "sound discretion" standard of San Francisco Business and Tax Regulations Code, article I, section 26. Petitioners' overbroad, scattershot arguments, such as their claim that the Board's action was in conflict with statutory provisions regarding the improvement and rehabilitation of property, and their contention that the City has "telegraphed" that it will continue to "retaliate" against them and "never approve any permit they seek," are unpersuasive. Petitioners repeatedly ignore the substantial evidence discussed herein that their project was a "demolition" and would eliminate affordable housing from the rental market, and the Board's broad discretion to act consistent with the City's interest in discouraging such demolitions and preserving such housing.

DISPOSITION

The superior court's denial of petitioners' petition for writ of administrative mandate is affirmed. Respondent and real party in interest are awarded costs.

We concur: KLINE, P.J., and HAERLE, J.

All Citations

Not Reported in Cal.Rptr.3d, 2007 WL 779353

Footnotes

1 The record indicates that ABT, LLC became the owner of the subject real property in 2004. To avoid unnecessary confusion, we refer to the actions of "petitioners" throughout without distinguishing between appellants.

2 All governmental entities referred to herein are part of the City and County of San Francisco, unless otherwise indicated.

3 We also take judicial notice of the City's Charter pursuant to Evidence Code section 451, subdivision (a), and of the municipal laws discussed herein pursuant to Evidence Code sections 452, subdivision (b) and 459.

4 Section 3.651 of the City Charter dealt with the Board's authority prior to Charter section 4.106, and language from that provision similar to that found in Charter section 4.106 was relied upon by the *Guinnane* court. (*Guinnane, supra,* 209 Cal.App.3d at p. 739.)

5 A zoning administrator summarizing the Commission's finding to the Board at its February 2004 hearing stated that "[t]he primary basis of the [Commission's] denial was that as a defacto demolition, this project resulted in the loss of affordable housing, and the destruction of sound housing." He later stated: "I did want to talk a little bit about the defacto demolition. While that's not an official term or part of the demolition policy, I believe the [Commission's] issue here was that by extending the building to the rear, removing the front façade and extending the front wall forward, totally remodeling the interior and removing most of the walls, it is not a technical demolition, but it was substantially the same effect from a design point of view of being a demolition."

6 The parties refer to the City's Building Code section 103.3 or 103.3.1 in their briefs for these same provisions. We refer to section 103.3.2, as the relevant provisions are presently denominated.

7 The parties do not dispute that hearsay evidence may be considered in such a municipal administrative proceeding. (See *Mohilief v. Janovici* (1996) 51 Cal.App.4th 267, 294-295 [unsworn statements and letters in the case file may be considered as evidence in municipal nuisance abatement proceedings].)

8 While Ng states in his letter that as "project engineer and architect of record, in *our* professional opinion, the subject building permit application is an alteration and not a demolition" (italics added), he merely identifies himself as a "P.E." and principal of the "BEST Design & Construction Company" (the letterhead also identifies him as a "CLC"); another individual, not a signatory to the letter, is identified as an architect on the letterhead.

9 Stoller stated, "I believe that taking into consideration items 1 through 3 above, could indicate that only 38% of the existing gravity load wall is being retained. Including items 4 & 5 into consideration, could likely indicate that 33% or less of the existing wall structure will be retained."

10 These were stated by petitioners' representative Bret Gladstone at the November 2004 rehearing.

11 We find sufficient substantial evidence without needing to determine whether or not the Board was entitled to rely on statements from the public or the Commission regarding the project's impact on affordable housing, a matter referred to by the superior court and debated between the parties in their appellate papers.

12 The Commission's findings recognized that Rent Board issues were beyond its purview, stating, "Any conditions of approval attached to the building permit relating to rental rates, relocation, tenant's right of return, and other arrangements made between the landlord and tenant would not be enforceable by the Planning Commission."

October 2, 2021

President Joel Koppel
Vice President Kathrin Moore
Commissioner Sue Diamond
Commissioner Frank Fung
Commissioner Theresa Imperial
Commissioner Rachael Tanner

Re: Planning Code Section 317 (b) (2) (D)

Dear President Koppel, Vice President Moore and Fellow Commissioners:

Please have a hearing on Planning Code Section 317 (b) (2) (D). This is the part of the Code that allows the Planning Commission to adjust the Demolition Calculations for up to 20% of the values for Tantamount to Demolition.

If you had a chance to watch the March 26, 2009 SFGOVTV hearing (Item No. 9) on the unanimous approval of the first **Code Implementation Document**, you heard Mr. Nikitas say he would return to make recommendations on the *"thresholds for alteration projects that are Tantamount to Demolition"*.

We know that never happened.
There has never been a hearing on adjusting the values for the Demolition Calculations.
As Mr. Nikitas said, the Commission is "empowered" to do this per Section 317 (b) (2) (D).

A hearing like this should cover:

1. Why have the thresholds or the values** for the Demo Calcs never been adjusted?
2. Should they be adjusted?
3. What would happen if they were adjusted?
4. What level should they be adjusted to if they were adjusted?
5. What are the *changes* in the *"Notes and Clarifications"* re: Tantamount to Demolition in the **Code Implementation Document** from the 2009/2010/2014 versions to the 2020 version?
6. Why was Noe Valley declared the *"epicenter for de-facto demolition" and what about other neighborhoods including other neighborhoods in District 8*?
7. Does the Planning Commission have a responsibility to do such adjustments given its legislative authority?

Sincerely,

Georgia Schuttish

Georgia Schuttish

P.C.Sect. 317 uses the term "values" for the Demolition Calculations, while the **Code Implementation Document uses "thresholds". They are one and the same, just as "Tantamount to Demolition" is the same thing as "de-facto demolition".

cc: Rich Hillis; Corey Teague; Scott Sanchez; Elizabeth Watty; Audrey Merlone; Tina Tam; Sylvia Jimenez; Kate Stacy; Kristen Jensen; Austin Yang; Aaron Starr; Jonas Ionin; Laura Lynch; David Winslow; AnMarie Rodgers; Jacob Bintliff; Dan Sider

3. 2020-006344CUA (R. BALBA: (628) 652-7331)
37 VICENTE STREET – southwest corner of West Portal Avenue; Lot 032 in Assessor's Block 2989B (District 7) – Request for **Conditional Use Authorization** pursuant to Planning Code Sections 303 and 729 to permit the installation of a new AT&T Mobility Macro Wireless Telecommunication Services Facility at the rooftop of the existing two-story commercial building, consisting of nine (9) new antennas and ancillary equipment as part of the AT&T Mobility Telecommunications Network. Antennas will be screened within one (1) FRP enclosure and three (3) faux vents. The project is located within the West Portal NCD (Neighborhood Commercial District) Zoning District and 26-X Height and Bulk District. This action constitutes the Approval Action for the project for the purposes of CEQA, pursuant to San Francisco Administrative Code Section 31.04(h).
Preliminary Recommendation: Approve with Conditions

SPEAKERS:	None
ACTION:	Approved with Conditions
AYES:	Tanner, Fung, Imperial, Moore, Koppel
ABSENT:	Chan
RECUSED:	Diamond
MOTION:	21006

C. COMMISSION MATTERS

4. Consideration of Adoption:
   - Draft Minutes for September 23, 2021

SPEAKERS:	None
ACTION:	Adopted as amended
AYES:	Tanner, Diamond, Fung, Imperial, Moore, Koppel
ABSENT:	Chan

5. Commission Comments/Questions

Commissioner Diamond:
Commissioners, this week, I believe we all received a letter from Georgia Schuttish, asking us to hold a hearing on the demo calcs. At least for the two years that I've been on the Commission, Ms. Schuttish has been incredibly persistent in raising this issue, and virtually every hearing. And I'm wondering, Director Hillis, if it might be useful, now that section 317 – I'm going to stop for a second because I also hear the blue angels, I'm just going to let them pass. I'm wondering if it might be useful, now that 317 has been in effect for a number of years, to step back and look at what the underlying policy goals were and what the experience has been. What we have accomplished, what's working, what's not working, and have a hearing that's broader than just revising the demo calcs but looking at the whole issue in general. I think it's a good idea, when we adopt a new policy to see how it is actually worked out in practice and see whether or not any tinkering or broader amendments are necessary in order to accomplish those goals. So, I was curious about your thoughts on that type of thing.

Rich Hillis, Planning Director:
Sure. And you know, recognized as well for the eight years that I sat on the Commission prior to you, I think for most of them Miss Schuttish has brought up issues up around demolition and the policy and our controls. So, I very much agree that it is something we can put together an Informational Presentation. Some of these issues have obviously come up, whether it's during Supervisor Mandelman's Large Residence ordinance or prior when we were doing the residential expansion threshold, which was about five years, but we do have fourteen or so years under our belt with this provision of 317. So, I think as well as looking at Miss Schuttish's questions about the specifics around the demo calcs and how they are working, your notion about looking broadly at the policy and whether they're actually doing as intended, we can take on. I think it'll take us a bit to gather info and data to have a meaningful discussion. So, if you give us a couple of months, maybe early next year, we can accomplish that.

Commissioner Diamond:
That would be great. It does seem to me that it takes a large amount of the Department time. City Planning and maybe the Building Department as well. And so, it would be useful to just step back and see whether or not, as currently drafted, it's working for whatever the goal was at the time that was adopted. Thank you.

Rich Hillis, Planning Director:
And obviously taking a lot of your time too. There's a lot of these CUs on your calendar. So, happy to do that.

Commissioner Diamond:
Thank you.

Commissioner Imperial:
I would also add in terms of the demolition discussion that were hope to have, for me, I would like to see the discrepancies between the DBI and Planning. I think there are a lot of issues that even I still need more clarification, and I think it will be benefit for us, for Commissioners, to understand those things.

Rich Hillis, Planning Director:
Sure. We can do that, as well.

6. 2021-009977CRV – Remote Hearings – Consideration of action to allow teleconferenced meetings and adopting findings under California government code section 54953(e) to allow remote meetings during the COVID-19 emergency; continue remote meetings for the next 30 days; direct the Commission Secretary to schedule a similar resolution [motion] at a commission meeting within 30 days.

SPEAKERS:	Jonas P. Ionin – Staff Report
	Sue Hestor – Public meeting requested
	Georgia Schuttish – Increase time for public to speak
ACTION:	Adopted
AYES:	Tanner, Diamond, Fung, Imperial, Moore, Koppel
ABSENT:	Chan
RESOLUTION:	21007

ACTION: Withdrawn

7. 2021-004810CRV – COMMISSION RULES AND REGULATIONS – The San Francisco Planning Commission will consider adopting amendments to their Rules & Regulations, in accordance with San Francisco Charter, Article IV, Section 4.104.

SPEAKERS: Sue Hestor – June 24 calendar
ACTION: Continued to June 24, 2021
AYES: Tanner, Diamond, Fung, Imperial, Moore, Koppel
ABSENT: Chan

B. COMMISSION MATTERS

5. Consideration of Adoption:
   - Draft Minutes for May 27, 2021

SPEAKERS: None
ACTION: Adopted
AYES: Tanner, Diamond, Fung, Imperial, Moore, Koppel
ABSENT: Chan

6. Commission Comments/Questions

None.

C. DEPARTMENT MATTERS

8. Director's Announcements

Rich Hillis, Planning Director:
Good afternoon, Commissioners. A couple of items for you. One, I just wanted to advise you that we've had two meetings now with the Equity Council, which is advising us, the staff, on implementation of the resolution you passed, as well as our priorities in Equity Plan. I've had good conversations that the meetings so far have been more introductory and getting to know each other in what we all do, as well as kind of setting priorities where the council wants to address. What their priorities are to take on and those are Housing and Budget in our work priorities, etc. So, we'll come talk to you more and give you briefings as we move forward. Also, I wanted to let you know that July 1 is when we'll expand services at the Permit Center at 49 South Van Ness. We'll be eliminating appointments with DBI and going back to the open Permit Center that we had pre-Covid. I also wanted to let you know that our Current Planning team is meeting with DBI and their inspection staff to brief them on issues around and our rules around tantamount to demolition. So I want to thank our Planning team for taking that on and kind of bridging us and DBI on our various rules around demolition. And then, I just wanted to let you know, we don't have any additional information. We've seen a lot on re-opening, but no new guidance on when we are able to go back to City Hall for live meetings. We anticipate that to be sometime in the fall, but that's subject to change and we'll keep you updated on that. And that's all I have.

spaces, up to 12 car-share spaces, 200 Class 1 and 27 Class 2 bicycle parking spaces, and 3 freight loading spaces within a below-grade garage. The Project is utilizing the Individually Requested State Density Bonus Program to achieve a 42.5% density bonus thereby maximizing residential density on the Site pursuant to California Government Code Sections 65915-95918, as revised under Assembly Bill No. 2345 (AB 2345). The Project Site is located within a C-3-G (Downtown General Commercial) Zoning District, Downtown Plan Area, and 160-F Height and Bulk District.
Preliminary Recommendation: Approve with Conditions
(Continued from Regular hearing on June 10, 2021)

SPEAKERS: Same as item 13.
ACTION: Continued to July 22, 2021
AYES: Tanner, Diamond, Imperial, Moore, Koppel
ABSENT: Chan, Fung

B. COMMISSION MATTERS

6. Consideration of Adoption:
   - Draft Minutes for June 10, 2021 – Closed Session
   - Draft Minutes for June 10, 2021 – Regular

SPEAKERS: Georgia Schuttish – Director Hills referred to working with DBI on Tantamount to Demolition. What is "working with" exactly? Ms. Wong and Ms. Berger wrote an extremely good presentation which Ms. Watty sent to me. Should be on Department website. January 2020: Director Rahaim replying to a direct question from President Koppel about the Demo Calcs said "Ms. Watty was working on it". Presentation updates corrections to Clarifications in the 2020 CID on how to do the "math" for Demolition Calculations. Also more expansive than 2015/2016 Training Manuals put together for Staff after determination in late 2015 that based on sample, 40% to 50% of Alteration projects should have been reviewed as Demolitions, stated in approved Minutes on January 7, 2016 by former Commissioner Richards. New document good resource. When Demo Calcs are adjusted. becoming more stringent, in order to preserve housing, allowing for reasonable Alterations, which is: Reason for Section 317.

ACTION: Adopted
AYES: Tanner, Diamond, Fung, Imperial, Moore, Koppel
ABSENT: Chan

7. Commission Comments/Questions

None.

C. DEPARTMENT MATTERS

9. Director's Announcements

Director Rahaim:
I think you're last meeting had been the 21st. So, you moved it up by one week, we did - - your point is well-taken Commissioner, there were projects that were anticipating for the Commissioner on the 21st, we'll have to look at the calendar.

Commissioner Johnson:
Yes, It was originally on the 21st and you know babies do what they want to do. They don't care about Planning Commission.

Susan Cleveland-Knowles, Deputy City Attorney:
If I could make one comment, Deputy City attorney Susan Cleveland-Knowles, I would recommend that you just give general guidance to the Commission Secretary today, to agendize both a suspension of the rules and the vote on the election of the officers for next week, because this item isn't on your agenda this week. So you'll first, next week, vote to suspend the rules and then you'll take a vote on the election of officers. So, I don't think there's a need for a vote today.

Commissioner Wu:
So, that it's just advice to the Commission Secretary then.

Susan Cleveland-Knowles, Deputy City Attorney:
Yes, at this point.

Commissioner Wu:
So, if is okay with the President, I'd like to advise the Commission Secretary to schedule both of those votes for next week, to suspend the rule -- temporarily suspend the rule and to schedule a vote.

Commissioner Richards:
I guess a couple of things, I saw here in the Examiner yesterday about the Mayor asking for budget cuts. I see here in the article, and I haven't had the chance to talk to anyone about it, but he talks not having to actually start to make cuts unless there could be some type of a raise in revenue or some type of reorganization. I know this organization is part of the Mayor's Housing Group looking at process improvement and things. I think there might be some – certainly you going to find some low hanging fruit, in terms of efficiencies that are gained that we might be able to look and negate some of these cuts, I am sure the Director would be open to that. I bring that up and I am happy to participate in that effort myself. Second thing, Ms. Schuttish, I know she is here from Noe Valley, she comes nearly every week. We had a meeting with the Zoning Administrator and the Building Inspector, Mr. Casey? No, the building inspector that handles Noe Valley, I don't recall who that is, I apologize. Duffy! And we went over four

PLANNING COMMISSION
APPROVED MINUTES
JANUARY 7, 2016

examples that she brought here, which look to be demolitions, de-facto demolitions, of the four that we found, there were two that needed I think, some more training for the planner, because the calculations were exceeded, and the Zoning Administrator was going to take that back and make sure that training was given. One of them was bona fide and the other one clearly exceeded the envelope of the house, however, it look like from the pictures they kept the right pieces of it, and its appeared that it was a demolition even though after, when the photos were taken those pieces were removed. It really, I think, it got everybody thinking about how to define demolitions in the future as a percentage how big the houses are expanded. It was a really good meeting and I really thank the Zoning Administrator and Mr. Duffy and Ms. Schuttish for taking time before Christmas to do that. One last thing, I keep hearing the word venerable and I keep hearing the word Oakland applied to it, not because everything in Oakland is venerable, but we keep having venerable businesses leaving San Francisco. Yesterday in the paper, Flax Art Store is leaving San Francisco. My fear is and I'll bring the letter to the editor, here it is, somebody called San Francisco is rapidly degenerating into a homogenized, gilded cesspool of entitlement and privilege. My fear is, that's from the Chronicle, Mr. Stosh-Whiteless from San Francisco. We keep hearing about the businesses going away and start wondering what it's going to be like in San Francisco in about ten years? Is it going to be the San Francisco that we know or it is going to be a gilded cesspool and it worries me, so now I have to go to Oakland to go to Flax when I want to buy something.

Commissioner Hillis:
I just wanted to point out in to Flax, because of my position as the Director of Fort Mason, Flax did open a new store at Fort Mason. It's often ignored. I don't know if it just doesn't play into the narrative that things are moving into Oakland, but they got a great new 5,000 square foot store, which is pretty substantial, not as big as their 20,000 square foot store on Market Street, but it still remains in the City and it's at Fort Mason and I invite everybody to visit it there.

Commissioner Moore:
Thank you, Commissioner Hillis, for clarifying that. Driving by Fort Mason, the sign is quite obvious that Flax is in Fort Mason. Anybody who frequents Flax knows that, knew it for quite a few months. So, kudos to you that you were able to get a 5,000 square foot store; which is sufficiently large for them to do what they do.

D. DEPARTMENT MATTERS

8. Director's Announcements