MINUTES OF THE REGULAR MEETING OF THE
CITY OF ALAMEDA HOUSING AND BUILDING CODE
HEARING AND APPEALS BOARD
WEDNESDAY, FEBRUARY 27, 2008

CONVENE: 3:00 p.m.
Chairperson Humphreys called the meeting to order at 3:00 p.m.

ROLL CALL: Member Cambra is absent, Member Holmes, Member Kahn, Member Storar, Chairperson Humphrey are present. 4 present 1 absent. We have no approval of minutes. We'll move on to the public hearings Item 3-A. 1617 Central Avenue appeal of the decision of the hearing officer regarding a notice and order issued 4/18/07.

Also present were Greg McFann, Appeals Board Secretary and Building Official, Mohammed Hill, Assistant City Attorney, Tim Higares, Code Enforcement Officer, George Carder, Supervising Building Inspector.

Mr. John Doherty (appellant), Ms. Dee Doherty (appellant's niece), and Mr. Holtz (attorney for the appellant) were also present.

Chairperson Humphreys: You want to proceed?

Secretary McFann: If you go ahead and ask anybody who is going to testify to swear to tell the truth.

Chairperson Humphreys: Anyone that's going to testify will please come forward and swear that you're going to tell the truth.

Chairperson Humphreys: If you could raise your hand please if you're going to testify. Raise your hand. Do you promise to tell the truth the whole truth and nothing but the truth?

All: I do.

Chairperson Humphreys: Mr. Doherty did you swear?

Mr. Holtz: Mr. Doherty are you going to testify?

John Doherty: No.

Mr. Holtz: Mr. Doherty will not be testifying.

Secretary McFann: Alright. Thank you. Before we get started I'd like to read a letter from Commissioner Cambra.

RE: 1617 Central Avenue Appeal. Dear Mr. McFann: I am in receipt of the packet sent to me by your department pertaining to the February 27, 2008 meeting of the Housing and Building Code Hearing and Appeals Board. Item 3A involves the appeal of a hearing officer's decision regarding a Notice and Order issued on April 18, 2007. As you are

aware, I was a hearing officer for the City of Alameda and rendered a decision on an appeal of an administrative citation filed by this property owner and involving the same property. While I believe that I could fulfill my obligation as a commissioner on this Board to render a fair and impartial decision on this appeal, the fact that I have knowledge of the property beyond what other commissioners posses, that I authored a decision adverse to the property owner, and that my participation in this hearing would create the illusion of bias, I must reframe from attending and participating in this appeal. If I can be of service to the City in other forums, please contact me. Sincerely, Jeff Cambra, Commissioner.

At this point I'd like to introduce Mo Hill from our City Attorney's office to begin the City's case.

Mr. Holtz: If I may interrupt for just a second. My name is Holtz I'm the attorney appearing on behalf of Mr. Doherty. I just wanted to go over some procedural grounds that we're going to follow here today. Because we are still unclear as to those procedures that have been adopted by the Board. As to what procedures we're supposed to follow. I'd like to go on record saying we received the procedures at 3:05 and this is the first time I've seen these procedures. The first time Mr. Doherty's seen these procedures. Have you ever seen any of these procedures before? This is the first time any one of the appellants have received or seen any of these procedures. Therefore at this time I must ask for a continuance for a couple days for us to review these procedures to make sure that the City has complied with the procedures and make sure that we are fully representing Mr. Doherty and his due process rights. Therefore I would ask for a continuance of this hearing at least for 48 hours.

Chairperson Humphreys: Mr. McFann do you have any comment?

Secretary McFann: No Sir. I believe our City Attorney's office has a comment.

Mo Hill: The requirements of the Municipal Code don't require providing a copy of the procedures to them at this time. It's not a requirement in case law either. We've fulfilled the requirements of due process continually and a continuance is just not necessary at this time. And frankly, I would be amenable to giving them as much time as they need today to go over the procedures. They're certainly not lengthy. I believe the pertinent procedures are the conduct of the hearing which is on the last page number 2 and it's basically one paragraph. We can certainly take a 15 minute break for them to go over it.

Chairperson Humphreys: Is that amenable to you Mr. Holtz?

Mr. Holtz: At this point, yes. I believe a 15 minute break to review the procedures then we can come back and discuss whether or not we would ask for a continuance.

Chairperson Humphreys: Okay. Thank you.

Chairperson Humphreys called for a recess at approximately 3:09 p.m.

The hearing resumed at 3:31 p.m.

Mr. Holtz: Thank you for allowing us that short break.

Chairperson Humphreys: Okay. It's now 3:31 pm. We're back in session. Mr. Holtz do you want to give us your opinion after having looked at the rules and procedures?

Mr. Holtz: Mr. Chairman we did look at the rules and procedures as I said the first time we were given these rules & procedures was when we came in the door. Notwithstanding the fact that Mr. Doherty has requested on 9/20 and again 2/19. And he was in fact given a copy of Alameda Code section 13-9.3 and was informed that these were in fact the rules and procedures that would be followed here today. Which you can clearly see are quite a bit different. So once again I would request a continuance for us to better prepare our case.

Chairperson Humphreys: For you to do what? Prepare your case?

Mr. Holtz: To better prepare our case. In compliance with the rules in particular rule article 4 section 4 article, 4 section 3, and obviously so we'd be better prepared in compliance with article 6 section 2. The conduct of the hearing.

Chairperson Humphreys: Those are articles and sections of what document?

Mr. Holtz: Oh I'm sorry. The City of Alameda Building Department Rules & Procedures for the Building Appeals Board. Yes, that would be article 4 sections 3 and sections 4 which is commencement of proceedings and other pleadings as well as article 6 section 2 the procedures for the conduct of the hearing. While it is true it is only one lengthy paragraph we still feel we would need time to be properly prepared for the hearing. And as I said before what we had received from the City was actually Alameda Municipal Code 13-9.3 which just basically says nothing about how the hearing is to proceed.

Chairperson Humphreys: I have a couple of questions on that. Number 6 sub 2 conduct of hearing deals totally with admissibility of hearsay evidence. Is that in any way going to impose a requirement that you prepare?

Mr. Holtz: We believe it is because obviously the evidence that under this which basically says that no technical rules of evidence need be followed. That would open up our ability to produce more evidence than the evidence we'd already prepared.

Chairperson Humphreys: And with respect to article 4 sub 4 other pleadings. Is it your thought that you're going to submit other pleading documents?

Mr. Holtz: Yes. That is correct. We would submit other pleadings.

Chairperson Humphreys: Do you have any idea – I don't want to hold you to it at this point - but what type of pleadings?

Mr. Holtz: Basically pleadings involving the issue of the number of units contained in the property. We do have testimony as to the number of units contained in the property which we believe is the core of this particular case. But if we were able to produce other pleadings we would do so.

Chairperson Humphreys: How much time are you looking for?

Mr. Holtz: I would say a week.

Chairperson Humphreys: Okay. Shall we put it to a vote of the board members? Whether we would have a one week continuance?

Mo Hill: Can I make a couple of comments before you do that?

Chairperson Humphreys: Yes.

Mo Hill: I wholeheartedly disagree that these rules and procedures are very different than the code section that has been supplied 13-9.3. Many of the requirements that are in 13-9.3 are in the rules & procedures. I understand the request under the sections of article 4 to submit other pleadings. Mr. Doherty has submitted documents as part of his appeal already and minimum due process safeguards required in case law do not require continuance based on that. Basically all you need under the *Bess v Park* case 144 Cal App 2.798 is adequate notice to the proper parties, obviously they're here today. A reasonable opportunity to be heard. Certainly available today. And #3 a chance to controvert the evidence. Which they have the ability to do that here today. Also I would note that it's an interesting point that they would make that they see the real focus and crux of this case as being the number of units at 1617 Central when if you look at the notice and order it's full of charges based on substandard conditions. It's also interesting that in the past hearing there was no contest of anything by the appellant. Especially the substandard conditions. So I just don't see a basis for that. We, the City, is certainly willing and able today to address all charges in the notice and order and I would certainly think that appellant, Mr. Doherty, who requested this hearing and the City complied in timely fashion according to the procedures set in place in the Alameda Municipal Code and I don't see the need to do a continuance. I don't see a need to interfere with your time any more. It's more of an affront to you guys who have to set the hearings.

Chairperson Humphreys: I note that the findings revolve around three issues one is electrical wiring the second one has to do with plumbing, gas plumbing; the third has to do with construction without required permits created more than two legal units.

Mr. Holtz: Mr. Chairman before you put it to vote can I just say one last thing. I'd also like to point out that notwithstanding the fact that Mr. Doherty has requested the transcript to the prior hearing to which the City Attorney referred. We have not yet received such transcript. While we believe, as I said before, the core of this particular case involves around the fact that it is the number of units involved in the property we haven't gotten a copy of the transcript from the hearing officer to go through her case point by point to address those statements just made by the City Attorney.

Mo Hill: Can I address that?

Chairperson Humphreys: Yes.

Mo Hill: That is absolutely untrue. It was requested on 9/20 we have documentation by certified mail that they received it on 10/19/07.

Secretary McFann: It's in your packet also.

Mo Hill: That should be in your packet as well.

Mr. Holtz: Proof that someone signed for it and received it?

Mo Hill: Yes. I believe board member Storar is holding it up.

Mr. Holtz: My clients are willing to testify at this time that they have never received it.

Mo Hill: That would be untrue.

Mr. Holtz: Well, I think it's for the hearing officer to decide.

Mo Hill: Best evidence. And as a further point to that I'm a little bit surprised that they would want a copy of that typed transcript which was requested for and done at their request. We certainly complied with it. They asked for it last week and we sent a letter stating they could come in and get it but that we had in fact sent it last year.

Mr. Holtz: At 10 cents a page.

Mo Hill: Yes, at 10 cents a page. But last year it was not charged for.

Mr. Holtz: The copy we never received.

Mo Hill: Well, there's the certified signature there. But beyond that at that hearing I'm surprised they really didn't participate in that hearing so I'm surprised that they would find it useful. I submit that it has been provided to them and the ability to obtain it has been provided to them as well.

Chairperson Humphreys: Okay, thank you.

Mr. Holtz: At this point I would just submit to our request to a continuance.

Chairperson Humphreys: Hal do you have anything you want to say?

Boardmember Holmes: What I'm hearing and what I've read about whether they had been given notice that they could pick the thing up after it was sent and they ignored it apparently. But are you asking for my vote?

Chairperson Humphreys: I'm asking you for any discussion that you have relative to the vote before we all make up our minds.

Boardmember Holmes: No, not at this time.

Chairperson Humphreys: Mr. Kahn.

Boardmember Kahn: No I have nothing further.

Boardmember Storar: No.

Chairperson Humphreys: Okay. I'll submit the question does the Board wish to grant a continuance of one week until next Tuesday at 3 pm, Thursday, I guess, at 3 pm on this matter? All in favor? Oh, Wednesday, I'm sorry, yeah Wednesday. All in favor?

Chairperson Humphreys, Boardmembers Holmes, Kahn, and Storar: Aye

Chairperson Humphreys: All those opposed? None.

Chairperson Humphreys: Your request for continuance has been denied. Mr. Hill will you proceed with your presentation?

Mo Hill: Yes, thank you Board. My name is Mohammed Hill I'm an Assistant City Attorney with the City of Alameda, I'm counsel to code enforcement and I have been counsel to code enforcement since I started with the City in July 2006. City staff present here who may testify, Mr. Tim Higares, he is the Senior Code Enforcement Officer, Mr. George Carder, who is a supervising building inspector and Greg McFann is the building official. We are pleased to be here today for the appeal of the hearing officers' statement of decision which is dated 9/10/07. This appeal obviously has been requested by Mr. Doherty the property owner of 1617 Central. The statement of decision and administrative order by the hearing officer is in your packet and I will not recount her findings and order here. You certainly I'm sure have read them and don't need me to do that. I would note with that prior hearing officers' – at that hearing that the hearing officer was an impartial officer as required by the *Haas* case and due process safeguards required for administrative hearings were followed. I stated these before I can state them again, there's adequate notice, a reasonable opportunity to be heard and a chance to controvert evidence. I wish to point out specifically now that Mr. Doherty chose at that administrative hearing to not present or controvert any evidence presented by City staff except by handing the hearing officer a stack of documents that he had filed with the Superior Court of the County of Alameda based on a tort lawsuit he had filed claiming damages because of the City's code enforcement activities at the property and that is in the typed transcript that you have. The City obtained a tentative ruling in its favor last summer in that case and Mr. Doherty filed a dismissal with the court. I have a copy of that court orders – of the court's order in that case if the Board wishes to see it.

Chairperson Humphreys: Is that in our packet?

Mo Hill: That actually is not in your packet. I can submit that as an exhibit now if you like.

Chairperson Humphreys: What was the date of that?

Mo Hill: That was signed on September 19, 2007. It's not in your packet if you're looking. I can hand it to you.

Chairperson Humphreys: Would you do that please?

Assistant City Attorney, Mo Hill, presented the board with a copy of the court order.

Mo Hill: A couple more points about that hearing and then I'll move on and present Tim Higares to testify. Mr. Doherty did not deny the conditions of his property as detailed in the notice and order and also interesting enough, I wasn't going to point it out but, Mr. Doherty did at the beginning of that hearing contest the ability of the hearing officer to hear the case and there was just like today there was a delay at the beginning for her to review his request and make a formal decision as to whether she had the aptitude, expertise and impartiality to be the hearing officer for that case. And that's also referred to in your typed transcript of that hearing officer decision. When Mr. Doherty filed his appeal of the hearing officers decision he was required to file a statement of grounds for his appeal and all material facts in support of the appeal. This Board pursuant to Alameda Municipal Code subsection 13-9.3h shall determine whether the building structure or any portion thereof is in violation of the Alameda Municipal Code and whether the charges in the notice and order are true and if so order its repair, rehabilitation, vacation, or demolition by the owner, City work crews or private contractor. The City is now ready to present its material facts in support of the hearing officer's statement of decision that the charges in the notice and order are true. I have Tim Higares, Senior Code Enforcement Officer who will come up and do that. He is ready to talk about what was presented at the administrative hearing by the City, discuss the conditions of the property that he noted pursuant to an inspection warrant issued by the Superior Court of Alameda. That inspection occurred on 4/10/07 and he can go over the specifics of the notice and order and even a chronology of the history that led up to the notice and order as much as the Board desires. So I'll present Tim.

Chairperson Humphreys: Mr. Higares you want to take the podium?

Mo Hill: I believe he has a slide show that shows some pictures from the inspection.

Chairperson Humphreys: Okay. You're under oath, you were sworn in a while ago.

Tim Higares: Yes sir. Okay I want to start real quick by having another exhibit it's actually a more detailed permit history that was not included with your packet. It goes back to 1910. Did you all receive the additional information that I sent out to you which would have been the documents that Member Storar asked for? Everyone has that? Okay great. The house located at 1617 Central has been an ongoing enforcement case for over 5 years. Based on several inspections conducted by City staff the last one was conducted on April 10, 2007, with a court approved warrant the building official has determined that the property located at 1617 Central Avenue has been converted from a legal duplex to an illegal 10 unit building all done without permits. A notice and order was issued and posted on 4/18/07 and you have that in your packet. Code enforcement staff has tried for many years to have Mr. Doherty provide documentary proof of approval for the 10 units added to the building. Although he has submitted copious amount of documents none of them support his claim that the modification to the building was legal and permitted. Many of the units are occupied as rental units and pose a health and safety hazard to the occupants. I'm going to show you some photos of the property and I'll explain them. This is just a brief sampling of some of the stuff. This is a front view of 1617 Central. That's a front view of the property that's a very recent picture taken I believe 2 days ago. Go on to the next slide please. That's another front view of the exterior of the building. Next. That's one more front view of the building. You see blight that it's posing

on the community. Next. That's a rear picture done on the inspection we did on 4/10 under warrant. That was a rear view. Next. That's also located in the back. That's a tarp that's attached to the house. There was no one occupying that trailer however that's the sort of debris that we observed in the rear of the property. Next. On that 4/10 inspection, even now, there was construction going on without permits. As you see on all the permit histories I've given you there is no permits that have been obtained for any work and there's some work in progress on a bathroom in one of the units. Next. That's another shot of the work that was in progress. Next. That is one of the units that was – there was no one there when we inspected however there was evidence that someone was occupying – that's a bathroom a toilet that's installed in a closet. There was plumbing it's got full plumbing and you see the closet door and the clothes hanging there. Next. That is the bathtub that is outside of the closet but in the bedroom in that unit. And there's the sink. Once again not in the bathroom, you see the closet over there. So it's in the corner of the bedroom. Next. That's a unit. That's one of the units that is typical of what we see in 1617 Central. Kind of a studio type unit with once again a non-permitted unit with an illegal kitchen. We actually didn't go – Miss Dee Doherty opened the door for us, we took the photo, there was no one in there so we didn't go in and do a full inspection of the interior of that since the tenant wasn't there. Next. Again, that's another illegal unit. That's the kitchen that you're seeing there. Once again a studio type unit. Next. That's an illegal basement unit. That's a kitchen. Next. It changes but at last count I believe there was approximately 7 of these wood burning stoves installed throughout the property, if not more. That worries us. They were all installed without permits and that's what we consider a life safety hazard. That concludes the photos.

I'll continue. On June 25th an administrative hearing was held to hear Mr. John Doherty's appeal of the notice and order issued by the building official, Gregory McFann, dated April 18, 2007. The notice and order directed Mr. Doherty to do 2 things – vacate the property within 30 days because we had concerns for the tenants that were in there – for their safety. So we gave him 30 days to vacate them and then obtain permits to restore the building to its original configuration which is a duplex within 60 days. As Mr. Hill stated earlier on August 30 the hearing officer ruled in favor of the City upholding the conditions of the notice and order. You have that in your packet. She basically agreed with what the notice and order said. Mr. Doherty has been given ample time and opportunity to submit plans to comply with the building official's notice and order and subsequent hearing officer's decision. To date he has not complied. Based on the evidence I've submitted the City of Alameda asks this Board to uphold the hearing officer's decision that directs Mr. Doherty to obtain all required permits within 30 days and return the dwelling back to a duplex within 180 days from the date of your ruling. I'd be happy to answer any questions that you have.

Chairperson Humphreys: When was the last time you physically inspected the property?

Tim Higares: We do periodic exterior drive bys just to monitor. But the last interior inspection was done under warrant on April 10, 2007. We asked for voluntary inspection and that was not allowed so we petitioned the court and they granted us a warrant based on what we submitted. That inspection was conducted by myself, building official and 2 police officers.

Mo Hill: If I may interject, I have copies of the warrant that was issued by the court if you wish to have that as an exhibit.

Mr. Holtz: Is that the warrant issued by Judge Gee?

Mo Hill: I believe so, yes.

Mr. Holtz: Based on the fire inspections?

Mo Hill: Based on what we submitted to the Court.

Mr. Holtz: That was the fire inspections, right?

Mo Hill: It included more than that.

Mr. Holtz: But it did include the fire inspections?

Mo Hill: Yes, I believe so.

Mr. Holtz: Which are inspections for apartment buildings, right? The fire inspections are inspections for fire for apartment buildings are they not?

Mo Hill: We didn't petition the court for anything to do with fire inspections as I recollect. It was basically verbatim from the notice and order. It references fire hazard but it also references hazardous and unsanitary premises, illegal wiring which was in the notice and order. Hazardous plumbing, dangerous building, unsafe condition, hazardous plumbing, permits required. I can submit it as an exhibit so everyone can see it.

Chairperson Humphreys: One further question. Was the notice and order of April, 18 2007 the first time that the property owner was requested to reduce the 10 units to 2 units?

Tim Higares: No sir. As I stated this case went back – and I purposely am trying to contain it to that but I'd be happy to tell you – bear with me for a minute I have a detailed chrono here. Okay on 4/28/04 – I don't have these here with me now this is my chrono so if anyone needs these I'd be happy to make copies at some point and get these to whoever needs them. Let me run through this. On 4/28/04 there was a notice and order issued for the same reasons. That was in 2004. Then we issued Mr. Doherty some citations and he appealed the citations and we had a hearing officer hear the case. We've actually had 3 different hearing officers and we've won all the hearings. Mr. Doherty appealed the citation. 11/17/05 the administrative hearing was conducted for the administrative citation. 12/28/05 the hearing officer found in favor of the City. We attempted 5 times to … we hired a process server to give Mr. Doherty these documents and he was unsuccessful and on the fifth time he finally was able to make contact. So to answer your question sir, no it's not the first time. His first notification was 4/28/04 formally through a notice and order. Before that there were plenty of notices of violations that we sent out letting him know this is what's going on, this is what we report. A notice of order is a last resort because we're not getting compliance.

Chairperson Humphreys: Many years ago there was an issue about the stairway fire protection requirements which necessitated sprinklers. I gather from the record that ultimately was accomplished.

Tim Higares: Sir I am aware of what Mr. Doherty has submitted. That was before my time so I have the same documentation you have. Yes, there was some interaction with the Fire Department however, what I do know they weren't there in a code enforcement capacity they were dealing strictly with fire code. To be honest with you when we got the case it was referred to us from Fire. They are the ones that actually initiated the code enforcement case in 2003. 12/16/03 is when Fire department referred this to us as possible illegal units. So I can't speak in great detail – George may have more information on that. He's my supervisor.

Mo Hill: I can address that. To our knowledge and I know to the Fire department's knowledge that there is not an issue with sprinklers in the structure. But that does not mean there is not an issue with how many dwelling units are in the building.

Chairperson Humphreys: When were the units actually installed? When did that happen? Do you know?

Tim Higares: I do not sir. Any more questions? Thank you very much.

Chairperson Humphreys: Any questions?

Mr. Holtz: The City attorney did testify in 1985 that the building had been converted to 10 units in 1945. And he testified to that in open court. If you want I'd be happy to read into the transcript what he actually said. The City attorney, Mr. Stroud, stated there is no exceptional way of getting around this legislation the building is/was built in 1887 converted to a - it was a big single family home converted to a 10 unit apartment house in 1945. It is 3 ½ stories tall.

Chairperson Humphreys: Thank you.

Secretary McFann: If I could just add - If you look at the permit history that Tim just gave you the older permit history it does clearly identify the building as a 2-family dwelling in 1951 as per the official records of the City.

Chairperson Humphreys: You refer to 1-2f?

Secretary McFann: That's referring to one two-family dwelling.

Chairperson Humphreys: Oh, okay.

Mr. Holtz: Not the first or second floor?

Secretary McFann: No.

Mr. Holtz: For $85?

Secretary McFann: In 1951 that's not an untypical cost for construction.

Mr. Holtz: As opposed to the $300, $200, $575, $300 and $500 they spent before?

Secretary McFann: Yes, those are typical costs.

Mr. Holtz: Much smaller typical but okay.

Mo Hill: The permit history doesn't show any differences since then.

Mr. Holtz: Now how do we know that 1-2f stands for one family to two family dwellings?

Secretary McFann: It's consistent with our records from that period of time.

Mr. Holtz: Do you know who entered that particular record in 1951?

Secretary McFann: I have no idea, no.

Mr. Holtz: Do you know if these records were available to the City attorney in 1985?

Secretary McFann: Yes, they were.

Mr. Holtz: So when he said in open court that it was 10 units, was he mistaken or was he lying?

Secretary McFann: He was mistaken.

Mr. Holtz: He was mistaken so he didn't have these records?

Secretary McFann: I have no idea what he had. I wasn't here in 1985.

Mr. Holtz: Good afternoon ladies and gentlemen. I'm the attorney for Mr. Doherty. Before we begin we have some documentation we'd like to provide to the Board. I apologize for not providing this earlier to the City but as of course I was not aware of the City's procedures so I was not aware when I was supposed to provide it. I'd be happy to give you a copy.

As I've stated and as the attorney for the City has stated basically we believe this case involves whether or not these are illegal units. Whether or not there are illegal units is based upon whether or not this is a duplex as the City is claiming or whether or not it is simply a building that was converted to 10 units in 1945 as the prior City attorney stated in open court. The documents we provided include among other things the court testimony by the head lieutenant for … lieutenant in fire prevention bureau for the City in 1985 who also stated it was a 10 unit building. I'm going to ask Dee Doherty to testify as to the issue of whether or not these are illegal and whether or not this building is or ever was a duplex.

Chairperson Humphreys: Dee Doherty?

Dee Doherty: Deanna.

Chairperson Humphreys: Did you take the oath as a witness?

Deanna Doherty: Yes I did Sir. This building is 900 sf, 9000 sf. It was converted as per testimony, as per formal City records from the fire department to a 10 unit. It has never been a duplex; it has never been 2 units. It could physically not be 2 units. There's no physical evidence that it was ever 2 units at any time in its entire history. The fire department records go back to 1959. These are available in the fire department they've been available to all City staff throughout this entire ordeal. Fire department records are exhibit H in your packets. You can see clearly it states the year constructed is 1887, the year converted, the number of stories 3, the number of units 10. The fire department has inspected this property since 3/12/59 as a 10 unit apartment house.

Chairperson Humphreys: I'm sorry I'm looking at exhibit H here, I don't see it.

Dee Doherty: It looks like this.

Chairperson Humphreys: Okay.

Dee Doherty: These records are part of the records that the testimony in 1985 was based upon. We have a current declaration from Carter Stroud, a current declaration from Steve McKinley, also in your packets. Once again declaring that their testimony in 1985 was true and was based on City of Alameda formal business records.

Chairperson Humphreys: Is that in our package?

Dee Doherty: It is.

Chairperson Humphreys: What's the item number?

Dee Deanna: I believe Carter Stroud's is C. You'll notice this is dated July 27, 2006. Lieutenant Steve McKinley is exhibit D. This one is dated May 14, 2007.

Chairperson Humphreys: You say that's B?

Mr. Holtz: C & D.

Chairperson Humphreys: Okay.

Dee Doherty: In addition I'll point out exhibit A – draw your attention to that. In 1982 the City of Alameda had to comply with SB811 which was the exit and fire safety program. That's what the City termed it as. SB811 required anything 3 or more units certain fire requirements. For this building the requirements are listed here in exhibit A. This was based on an inspection by Captain Robert Lagrown of the fire department on 3/4/82 clearly stating the number of stories as three clearly stating the number of dwelling units as 10 clearly stating the requirements of SB811. Based on that correction notice the City took us to court in 1985 because the material needed to be metal rather than plastic. That is where the testimony comes from is that discourse on the material.

Mr. Holtz: Which is exhibit B.

Dee Doherty: The judge exhibit E issued his judgment on the second page you'll see that the judge said in the alternative to the above which talks about the material talks about the sprinkler system the defendant may reduce the occupancy of the building to two dwelling units. Because SB811 covered 3 or more. Exhibit F is a copy of the original certificate of occupancy from the City of Alameda for the inspections complying with SB811. You'll see there that the certificate of occupancy was issued in August 22, 1986 by Mr. Phil Scott of the building department. You'll see that rough plumbing inspections were done by Lee Jones the plumbing inspector at the time. You'll see that Captain Marvin Helms finaled the fire department in 8/21/86 and Lee Jones also finaled the plumbing. Multiple inspections covering multiple disciplines a clear certificate of occupancy. Certificate of occupancy the definition of it is provided to you in the next page. Are there any questions at this point?

Mo Hill: We ask for clarification actually on one of the exhibits.

Chairperson Humphreys: Okay, go ahead.

Mo Hill: We're thumbing through it as you guys are. Is exhibit F the certificate of occupancy or is that the claim?

Dee Doherty: Exhibit F is the certificate of occupancy.

Mo Hill: We would contend these cards they have look like building permits. That's what we have.

Dee Doherty: This is a certificate of occupancy and an inspection card that was used in that time by the City of Alameda.

Mr. Holtz: Can we just clarify on how Ms. Doherty would know that?

Dee Doherty: I was the permit expediter for the City of Alameda in that year. I know each of these people personally. Exhibit G is something that was produced for me by the Fire department. Which I believe is out of the same database as what comes out of the building department according to how the systems are currently built but I'm not certain of that. It appears to be the same thing because the next page comes from the building department and the wording and spacing and timing is exactly the same. It appears to be the same database. You'll see on the address activity report I've circled in yellow a couple of dates showing that the City altered the record to downgrade the apartment building from 10 units to 2 units.

Mr. Holtz: Where it says unit determination 2 family dwelling from City record 3/8/51.

Chairperson Humphreys: Are you looking at page 1?

Mr. Holtz: I'm looking at page 2.

Chairperson Humphreys: Okay where does it say 10 units on page 1?

Boardmember Holmes: Down at the bottom there.

Chairperson Humphreys: It does not say 10 units.

Boardmember Holmes: You're on the wrong page George.

Chairperson Humphreys: Well who put the notation at the bottom of the second page?

Dee Doherty: I did.

Chairperson Humphreys: Right. So that was to bring our attention to what you perceived happened.

Dee Doherty: It's not my perception it's testimony.

Mr. Holtz: Where it's circled in yellow that is the official document. The note at the bottom is notes prepared by Ms. Doherty.

Chairperson Humphreys: Right.

Boardmember Storar: Actually, if you could connect the dots for me. I'm not understanding how this proves what the City did just looking at the 2 dates. I don't know if you want to do that now, or?

Mo Hill: I would echo that as well. We're not following that line.

Mr. Holtz: You want to do this?

Dee Doherty: No.

Mr. Holtz: The City received an anonymous tip on 12/16/03 that there were illegal units and housing going on at this property once again an anonymous tip. The following day the City made a determination that this 10 unit apartment building was now a duplex.

Boardmember Storar: Okay. I see what you're saying. I wasn't making the connection.

Mo Hill: Is that shown in the document?

Boardmember Storar: No. I was trying to understand why those 2 dates were circled and what that was supposed to communicate. So now I at least see their point.

Tim Higares: That was not an anonymous complaint. We got that from the Fire department so it was not an anonymous complaint. And second of all when we initiate a code enforcement investigation we do a unit determination. We base it on our City records.

Boardmember Storar: You are responding to the complaint by making the determination.

Mr. Holtz: But this is the City record you based it on, is it not?

Tim Higares: Yes, and Fire records.

Mr. Holtz: Fire records that says it was 10 units.

Tim Higares: You're right that's their records from their inspections. It doesn't make it a legal unit. Just because they saw it as 10 and they inspected it as 10 there's nothing showing that it's legal. Sure the City Attorney testified that there were 10 units but he didn't say legal units. And that's all we're saying. We're all in agreement there's 10 units there. Are they legal and were they put in with permits? I don't think so. Thank you.

Mo Hill: And we would contend that that is not the fire departments function anyway. That's the building department's realm.

Boardmember Storar: I'm not trying to draw more out of it. I'm just trying to get what the testimony was.

Mo Hill: Understood. I just wanted that on the record.

Chairperson Humphreys: Is there anything in the material that we've got in front of us here that shows where there was a building permit issued to convert to 10 units?

Dee Doherty: Possibly.

Mr. Holtz: The issue is as the City attorney stated these conversions were done in 1945. Therefore, it's quite possible that because it was done during that particular period of time, during the war period that as you know in the entire Bay Area there was a mass need for housing. The military was not waiting to get permits from the City to convert. So there are a number of buildings throughout Alameda, throughout Richmond, throughout Berkeley, throughout Albany that were converted from these large single dwelling units to multiple apartments to house people who worked for the military.

Chairperson Humphreys: In 1945?

Mr. Holtz: Yes in 1945.

Chairperson Humphreys: When was the war over?

Mr. Holtz: 1945

Boardmember Holmes: 1945 August.

Chairperson Humphreys: I was there.

Mr. Holtz: You'll agree that not just during 1945 but 1944 we don't know when in 1945 when this building was converted. We just know that based on the testimony of the attorney for Alameda, based on his review of the records this building was converted in 1945 to 10 units and since that time up until 2003 nobody said anything about illegal units.

Boardmember Holmes: May I add something here? During the 40's during the war in San Lorenzo houses were issued permits shortage of material provided they put a back door into a bedroom that they would rent them out. At some point after that that was abolished. It didn't change the coding at all. I wonder if such is the case here.

Secretary McFann: I can actually speak to that. The City of Alameda suspended building permits from 1942 to 1945 and Mr. Holtz argument might be valid if we did not have a permit from March 8, 1951 that clearly calls this building a 1 to 2 family dwelling. There were buildings that were certainly converted during that period of 1942-1945 that didn't have permits that we have since legalized in the records. But clearly the property owner in 1951 believed this building was a 1-2 family dwelling and came in to get a permit to make alterations to it. That's our records. If I could also just sort of step back a bit. Since the building codes were adopted in Alameda in 1930 the first uniform building code was adopted, the responsibility of the chief building inspector at that time now the building official is the individual who has responsibility for determining legal units. The City's building records are the mechanism for determining what was done legally and what was not done legally. Fire inspectors will do inspections on number of units because they want to make sure they're safe that doesn't necessarily mean that they're legal. We have resolved that in the last few years where if Fire goes out to a building that has multiple units they'll check with us to make sure it's the right number of units so that we don't have a situation where 2 departments might be saying 2 different things. But the units are only legalized through the building department and at the approval of at that point the chief building inspector now the chief building official.

Mr. Holtz: So basically in summary all we can really say is there was, correct me if I'm wrong Mr. McFann, there was a hiatus on permits during the war. Is that correct?

Secretary McFann: That is correct.

Mr. Holtz: Okay a hiatus on permits during the war, the City attorney in 1985 believed that this was 10 units therefore he sued my client to force my client to put in sprinkler systems that were required for a 10 unit apartment building but not required for a duplex. Other than this one document with an indication from 1951 for $85 saying it's been converted from a one-unit to a two-unit there is no other documentation anywhere saying this is a duplex. There's much more documentation saying its 10 units and we believe that these 10 units were put in legally. Mr. Doherty when he bought the property he bought it as a 10 unit apartment building to rent it out. He certainly did not put in these 10 units. They were put in long before he ever bought the property.

Chairperson Humphreys: When did he buy it?

Mr. Holtz: Mr. Doherty, when did you but the property? 1972.

Secretary McFann: I would argue that the photos we showed you clearly show the work has gone on since 1972. The pictures that Tim showed should clearly show new construction. That's new wood that's not wood that's been there since 1972. Clearly work has gone on without permits regardless of what Mr. Holtz has indicated.

Mr. Holtz: If I could just address that. I would agree that some work within the individual apartments has gone on but the division of the building into 10 units was in fact done long before Mr. Doherty ever bought the property.

Mo Hill: Can I request that our supervising building inspector address that issue as to when units were created?

Chairperson Humphreys: Yes.

Mo Hill: Mr. George Carder, he was on that inspection on April 10 as well.

George Carder: Hello my name is George Carder I'm the supervising building inspector. I have been in the property on more than one occasion. On one occasion when I was there I was in more than one unit and the units I was in showed the kitchens were being installed. They were using plastic pipe which was not available in 1945 and construction methods that were not available at that time.

Chairperson Humphreys: When was it that you were in there?

George Carder: I can't speak to the exact date. It wasn't under this one it was on a prior inspection about 2004 I think. So at that time there was construction going on with materials that were not available at that time in spaces that quite frankly just weren't kitchens. It's an old Victorian home and I was in one space that used to be what was perceived as a parlor which would be off of the main entrance and that parlor had a kitchen in it that was plumbed in plastic pipe and a bathroom that was in the process of being installed the sheetrock was off the ceiling and stuff like that. And at the time I was in the property there were other things going on. Mr. Doherty was re-sheet rocking the hallway where there was a leak in the roof and had taken that material out. I can say quite frankly that there was work going on there and there were kitchens and baths in there that weren't there in 1945 quite frankly.

Chairperson Humphreys: You have anything further?

Mr. Holtz: Ms. Doherty would like to address that issue briefly.

Dee Doherty: There is no construction going on. There was some preparation of a unit for an incoming tenant which was immediately suspended and left in the state that it was in when we were getting it ready for a tenant. We lost the tenant obviously. The sheetrock patching was done around the fire sprinklers. I really don't think we're talking about construction.

Mr. Holtz: Notwithstanding that, as the prior City attorney did testify it had been 10 units at least in 1985. And according to him it was converted in 1945 to those 10 units.

Mo Hill: I have a quick question about the suspension of the work you just noted. Do you have a date for that?

Chairperson Humphreys: Could you speak up please?

Mo Hill: I'm sorry. The suspension of the work that Ms. Doherty just noted what was the date that that occurred? That the suspension stopped.

Dee Doherty: I can't recall a specific date.

Mo Hill: Can you recall a timeframe?

Dee Doherty: I believe I really don't know. Several years ago.

Chairperson Humphreys: Okay that would agree with his recollection of 2004, wouldn't it? That's what he said. Do you have anything further Mr. Hill?

Mo Hill: I think Mr. Carder wanted to add a little bit more about the unsafe conditions in the property.

Chairperson Humphreys: Go ahead.

George Carder: What prompted us to the property especially when I was there on an interior inspection of the property was there was significant amounts of illegal wiring, gas lines that were uncapped, fireplaces that had been put in without any inspections that I deemed to be unsafe. There was leaks in the roof, the front porch was rotten, there was wiring hanging out of the wall.

Mr. Holtz: Isn't it true that the City ordered to be converted back to 2 units?

George Carder: Yes. The City recognizes the building as a 2 unit building. But the bigger picture is the building is still unsafe and people are living in this structure in an unsafe condition. We found there was no heat in some of the units or almost all the units. When I was in there I asked about the heat and Mr. Doherty indicated that the boiler was turned off. But there was no heat in the units when I was there.

Chairperson Humphreys: Assuming that this is a valid and legal 10 unit structure the deficiencies that you folks have observed remain and would require some type of remediation. Is that correct or not?

George Carder: That is correct sir. They would require a substantial amount of work to actually make these units into habitable units.

Mr. Holtz: In our exhibits under exhibit K we did address what I believe are the violations cited by the City and what Mr. Doherty has done in response to each of those violations.

Chairperson Humphreys: What exhibit is that?

Mr. Holtz: Exhibit K.

Chairperson Humphreys: Let's look at that.

Mo Hill: Can I ask if those remediation efforts were done with any permits?

Chairperson Humphreys: Would a permit be required to make the repairs that the City has observed?

George Carder: Absolutely sir.

Mr. Holtz: Wouldn't that be a case by case basis as to the actual violations? I mean obviously not all of them would require permits not all of them would not require permits. Some of them would, and some of them would not.

George Carder: All the violations I saw there would have required permits to be fixed. The additional bathrooms that are being added, the additional kitchens that were added, the fireplaces, the gas lines, the wiring, the leak in the roof, the rotten siding and stairs and no paint on the building, the weather protection of the building. The weather protection is actually the only thing that would not require permits. You can certainly paint the building without permits but to repair the siding, the stairs, the bathrooms, the kitchens, the heating system, the gas lines, all that would require substantial permits.

Chairperson Humphreys: The City has not inspected any work that has been performed by Mr. Doherty by virtue of no building permit having been requested?

George Carder: That is correct sir. We have no valid permits on the property and we have been refused access to the property on several occasions.

Boardmember Kahn: I have a question. If this unit is found to be legal in size to comply with – to bring them up to code is it physically possible besides the building, besides the roof, could permits be issued that would comply with everything that's required?

Mo Hill: Could you repeat that question Mr. Kahn?

Boardmember Kahn: Yes. If it is found that this building is legally 10 units in order to bring it up to code is the building physically laid out with enough space, etc to be brought up to code without demolishing the building?

George Carder: It's an historic structure Sir so we could not allow the building to be demolished to begin with. So we have to keep that one. Under the terms of Prop A the building could only be a legal duplex. If it was found that the building is 10 units I think you could possibly make a case to legalize some units but I don't think you could get 10 plausible units out of it. The way it's cut up sir.

Boardmember Kahn: That's my question.

Secretary McFann: There are a number of units that don't meet minimum requirements. In order to meet minimum requirements back to 1930 so clearly there's some issues with the units whether they had been legal or not.

Chairperson Humphreys: Okay does the City have anything further to present on this?

Mo Hill: I can do a closing statement.

Chairperson Humphreys: Okay.

Mo Hill: Members of the board, Chairman Humphreys. As shown today the City has engaged in a time and document intensive process in its issuance and defense of the notice and order. Staff understood that this kind of intensive work is required for the benefit of property owners who are the subject of these processes as well as the Hearing officers and ultimately this Board which is required to review and make determinations as to issued notice and orders. Staff should be commended for these efforts. The City has presented material facts in support of the Hearing Officer's statement of decision that the charges in the notice and order are true. The City respectfully requests that you uphold the hearing officer's decision in full. Thank you.

Chairperson Humphreys: Thank you. Mr. Holtz.

Mr. Holtz: I don't think I need to say anything other than what I've already said many, many times already. We believe the majority of the violations here are resulting from the City finding that this is a duplex with illegal units. And as our evidence shows in 1985 the City attorney for the City of Alameda went to court and testified in open court that it was 10 units. The lieutenant for the fire inspection division went to court and testified in open court that it was 10 units. They forced Mr. Doherty to stick in a fire extinguisher system that only applied to a 3 or more unit building not the fire extinguisher that he wanted to stick in because that only applied to duplexes. What the City has is a document from 1951 showing someone spent $85 for an alternation from a 1-2 F as opposed to the testimony and the belief of the fire department and the City attorney's office saying that this is in fact 10 units. When Mr. Doherty bought this property in 1972 he bought it as a 10 unit apartment. If the City is right and it was a duplex they are basically taking away Mr. Doherty's livelihood because now what he has is a really really large duplex which is 9,000 sf. We ask that the City, the Board simply follow the statements made by the City prior and hold the City to their word from 1985 that this is in fact 10 units. If that means 10 units that need to be fixed up, if that means 10 units that need to have new wiring and maybe new plumbing, that's fine. But we need to have 10 units. Thank you.

Chairperson Humphreys: Counsel, considering what you've just said about – if the property needs to have the 10 units looked at and dealt with from a life safety standpoint, I gather from the testimony that heretofore the City has not been given an opportunity to go in and make requisite inspections. Would you be willing, or would your clients be willing to allow the City to do that? If the 10 units is upheld?

Mr. Holtz: If you could bear with me for just a second? Yes, we would.

Chairperson Humphreys: Thank you. Would it then be your intention to apply for building permits to correct any deficiencies found?

Mr. Holtz: If it's decided that the property did need upgrades to bring it into … obviously I'm not an inspector but I know Mr. McFann can probably address this better than I, that because it's an historical building that the terms of how it has to be repaired you'd have to take into account the historical aspects of the building. Is that correct?

Secretary McFann: Yes, that's correct.

Mr. Holtz: Yes, so taking that into account, yes we would.

Secretary McFann: If I could just add one more time to be very clear. The fire department within the City charter of the building code does not have the authority to determine the number of units in a structure in Alameda. That is the sole discretion of the chief building inspector prior to the change of title to building official. The City's permanent records are the official records of the City regardless of what the City attorney may have testified to in court. The permanent records clearly indicate that in 1951 well after the time Mr. Holtz indicated the building was converted to 10 units, an alteration to a 1-2 family dwelling took place. The property owner pulled that permit he made that indication on the permit, he testified to that and signed a permit to attest to that. So at that time in 1951 it was a 2 unit building – 1-2 unit building at most. So I would just put that on the record.

Mr. Holtz: My only question to that is how long has that been the policy of Alameda do you know? In terms of who determines how many units a building has?

Secretary McFann: Since 1930.

Mr. Holtz: 1930, okay.

Chairperson Humphreys: It seems to me we can either take up the findings of the appeal hearing in their entirety or one by one. I'm looking for the findings right now.

Boardmember Holmes: There's 2 sets, September 10 and April 18.

Chairperson Humphreys: Okay I'm looking at 9/10 there are 3 findings at the bottom of the second page. The first one has to do with electrical wiring. The second one has to do with plumbing. And the third one has to do with construction without permits created more than 2 legal units. You want to take up the entirety or you want to take them up one by one?

Boardmember Holmes: Probably one by one.

Chairperson Humphreys: Okay. With regard to the first finding regarding electrical wiring. Does the Board approve the findings of the hearing officer of September 10? All in favor?

Chairperson Humphreys, Boardmembers Holmes, Kahn, and Storar: Aye

Chairperson Humphreys: Opposed? The first finding is upheld by a vote of 4-0

Chairperson Humphreys: The second finding is that the gas plumbing is found to either be disconnected or uncapped from appliances, etc. Does the Board vote to uphold the findings of the hearing officer as far as the second finding? In favor?

Chairperson Humphreys, Boardmembers Holmes, Kahn, and Storar: Aye

Chairperson Humphreys: Opposed? The vote is 4-0 in favor of upholding the findings of the hearing officer on the second finding.

Chairperson Humphreys: The third finding is that the construction was without permits created more than 2 legal units recognized by the City.

Boardmember Holmes: Can we have discussion on that?

Chairperson Humphreys: Yes, let's have a discussion.

Boardmember Holmes: I guess what comes to my mind is sympathy towards the property owners in light of what they thought they acquired at the time of their purchase. While I'm aware that the public records are the public records and the person is normally bound by that irrespective of whether they actually see them let alone understand what they may say. In this case, however, there's been some developments such as what the fire department did what an occupancy permit may have done or may have stated. There has been some egress and ingress repairs done in order to satisfy state fire code responsibilities. At no time did anybody raise the issue formally about the 10 versus 2 units. There is to my understanding and the City attorney would perhaps know this better than I would there are some cases that say that a City can be estopped in certain circumstances but there's a balance between life safety factors and the ability to obtain an estoppel in this case from the City to come in and enforce a 2 unit criteria over what is now apparently a 10 unit criteria. The requirements for an estoppel as the lawyers would know is pretty severe and I'm not sure we've had any evidence at this hearing as to whether or not that argument would apply in this case. And even if it did, whether or not it could be shown as a matter of law given the life safety considerations. So with that in mind I have somewhat of a quandary as to whether or not we should go ahead and permit the 10 story use albeit with the caveat that any life safety measures be remedied and a building permit be obtained in order to do that.

Mo Hill: I'm not sure how a building permit would be available for that situation. I don't feel I'm comfortable..

Mr. Holtz: We'd be happy to negotiate that.

Mo Hill: Wait a minute, hold on. I don't feel comfortable to speak as to the estoppel terms that you're addressing. I would have to do some research on that. But I would also bring up the notion of the doctrine of unclean hands. One who seeks equity from a court or an independent judicial body to seek equity you must not commit inequity basically. As your first two findings have shown there's been a lot of inequity as well as the pictures you've seen done by the appellants in this case.

Secretary McFann: I would additionally point out that the charge of the board is pretty clearly defined in the building code and talks about your responsibility to interpret building code and building official determinations and information from the fire department wouldn't necessarily be something that would fall under your purview.

Mr. Holtz: Does equity come into account?

Secretary McFann: I'm just stating what the hearing and appeals board role is based on the City charter and the municipal code.

Boardmember Storar: I want to state for the record I read through all the testimony prior to the meeting and I understand the statements of the City attorney and the fire official to be that they observed 10 units there. I don't interpret that myself as a board member as being a legal definition of there being 10 units. I wasn't compelled by that information. I've also been in many of Alameda's fine homes that people are renovating and I've heard the stories about how they were converted in the '40s and people were bringing them back to a single family home. Nobody was continuing that use in my experience by renting them or creating apartments. And I'm going on the testimony of Mr. Carder were appearing modern and modern construction. So that's sort of how I'm seeing the information. I just wanted to share my thoughts.

Chairperson Humphreys: Okay, regardless of Mr. McFann's point that this board is not able to make a determination as to the number of units the findings of the hearing officer did make such a finding, I believe. Or made the finding that it be converted back to 2.

Secretary McFann: Just to clarify. My point wasn't that you couldn't make the determination it was 10 units but that you would have to use building permit records to do so.

Mr. Holtz: Can I just comment on that? Pursuant to Article 6 subsection 2 any relevant evidence shall be admitted if it is the sort of evidence on which a responsible persons are accustomed to rely in the conduct of serious affairs. I would assume the fire records would be those type of documents.

Chairperson Humphreys: And specifically?

Mr. Holtz: In terms of how many units there were and also the testimony of the City attorney and the fire inspection from 1985. Going to the issue of equity.

Boardmember Storar: That they observed 10 units. Not that they decreed it was a 10 unit building. That's how I'm hearing the information.

Mr. Holtz: I don't want to argue with you but except for the fact that the reason they filed the lawsuit against my client in the first place was because the type of pipe he was required to use in that building was only for 3 or more units.

Boardmember Storar: Alright. I understand the lawsuit and I see that there was a disconnect that Mr. McFann explained.

Chairperson Humphreys: I guess an attorney can be wrong.

Mr. Holtz: Anybody could be wrong at one time or another - yes. I would hope he would do due diligence in his research prior to making those statements in open court.

Chairperson Humphreys: Is there any further discussion? Alright I'll pose the question. Does the board uphold the findings of the hearing officer of September, 10 2007 regarding third finding that the construction created more than 2 legal units? All those in favor?

Chairperson Humphreys, Boardmembers Holmes, Kahn, and Storar: Aye

Chairperson Humphreys: Opposed? We uphold the findings of the third finding of the hearing officer.

Mr. Holtz: In that case I would simply ask that pursuant to article 6 section 3 the decision be rendered in writing.

Chairperson Humphreys: That will be done.

Secretary McFann: That will be forthcoming.

Mr. Holtz: Thank you.

Secretary McFann: We don't have anything else on the agenda unless there's items the board would like to discuss.

Chairperson Humphreys: If there are no further items the meeting is adjourned.

Adjournment at 4:52 p.m.

This meeting was audio taped.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing written minutes are true and correct to the best of my knowledge and belief.

Althea J. Carter