

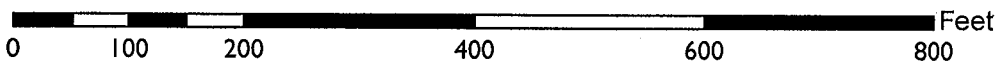
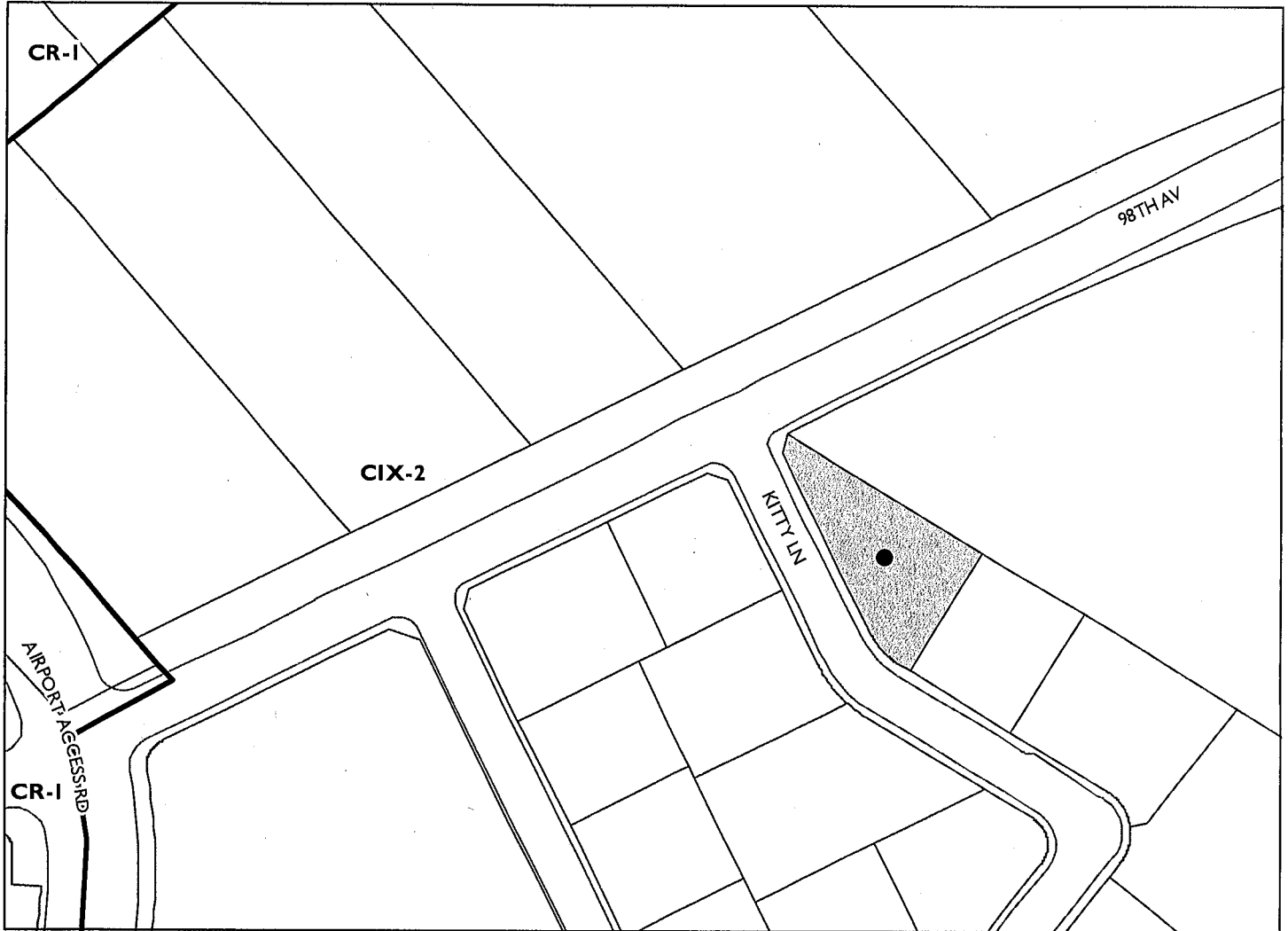
Location:	9850 Kitty Lane (See map on reverse)
Assessor's Parcel Number:	044-5020-019-00
Proposal:	To comply with the final Judgment and Writ in the lawsuit filed by the developers of a proposed crematorium (<i>Stewart Enterprises, Inc. and SE Combined Services of CA, Inc. v. City of Oakland et al.</i> , Alameda Superior Court Case No. RG12646176) by (1) vacating the Planning Commission's denial of the developers' appeal of the Zoning Administrator's determination that the proposed crematorium is subject to the Emergency Ordinance adopted by the City Council on May 15, 2012, and therefore requires an approval of a Major Conditional Use Permit, and (2) granting the appeal because the Court ruled that the building permit issued prior to the adoption of the Emergency Ordinance is not subject to the Ordinance (or extensions thereto), and that the developers may proceed with the crematorium project without the need to obtain a Major Conditional Use Permit.
Applicant/Appellant:	Les Hausrath of Wendel, Rosen Black and Dean, LLP on behalf of Stewart Enterprises, Inc.
Owners:	SE Combined Services of CA Inc.
Planning Permits Required:	Not Applicable
General Plan:	Business Mix
Zoning:	CIX-2, Commercial Industrial Mix 2 Zone
Environmental Determination:	Exempt, Section 15321 of the State CEQA Guidelines, Enforcement Actions by Regulatory Agencies
Historic Status:	Not a Potentially Designated Historic Property; rating: F3
Service Delivery District:	6
City Council District:	7
Status:	Pending
Action to be Taken:	Compliance with the Final Judgment and Writ issued in the lawsuit challenging the Planning Commission's August 29, 2012 denial of the appeal
Staff Recommendation:	Comply with the Final Judgment and Writ by reversing the Planning Commission's August 29, 2012 denial of the appeal
Finality of Decision:	Final
For Further Information:	Contact case planner Robert D. Merkamp at (510) 238-6283 or by email at rmerkamp@oaklandnet.com .

SUMMARY

In August 2011, Stewart Enterprises, Inc. (Applicant) obtained a Zoning Clearance from the Planning and Zoning Division for the operation of a crematorium in an existing non-residential structure at 9850 Kitty Lane.

On November 8, 2011, the Applicant received an "Authority to Construct" the crematorium from Bay Area Air Quality Management District (BAAQMD) for their application number 23669.

CITY OF OAKLAND PLANNING COMMISSION



Case File: AI2070

Appellant: Les Hausrath of Wendel Rosen Black and Dean, LLP
on behalf of Stewart Enterprises, Inc.

Address: 9850 Kitty Lane

Zone: CIX-2

In March 2012, Stewart Enterprises, Inc. applied for a building permit for tenant improvements and voluntary structural upgrades to the building at 9850 Kitty for the purpose of installation of a crematorium. On May 10, 2012, the City issued a building permit (B1200987).

On May 15, 2012, the City Council adopted Emergency Ordinance No. 13115, C.M.S., which established interim controls that required a Major Conditional Use Permit pursuant to Oakland Planning Code Chapter 17.134 prior to establishing or expanding crematorium uses, unless the applicant had a vested right under state law. On May 16, 2012 the Zoning Administrator issued a written determination that, notwithstanding the prior issuance of a building permit, the proposed crematorium was subject to the Emergency Ordinance and, therefore, must obtain a Major Conditional Use Permit.

The Applicant appealed to the Planning Commission (see attached).

The Planning Commission held a hearing on August 29, 2012. The Appellant asserted it had a vested right to use the Building Permit pursuant to Oakland Planning Code section 17.102.040(a), among other things. At that time, Planning Code section 17.102.040(a) provided that the City may not adopt and apply regulations to "prohibit" a project after issuance of a building permit.¹ The Planning Commission denied the appeal, by a 3 to 2 vote.

On August 31, 2012, the Applicant filed suit against the City and the Planning Commission (*Stewart Enterprises, Inc. et al. v. City of Oakland et al.*, Superior Court Case No. RG12646176). The Superior Court ruled that the City may not apply the Ordinance to the Applicant's project because the Applicant obtained a vested right under Oakland Planning Code section 17.102.040(a) upon issuance of the building permit. (The Applicant alleged several other causes of action, including to invalidate the Ordinance and for damages, none of which succeeded.)

On September 26, 2014, the Court entered the Judgment and issued a Writ of Mandate directing the City to reverse the Planning Commission decision denying the appeal and to honor the building permit (see attached).

The City appealed the Judgment to the First District Court of Appeal. After briefing and oral argument, the Court of Appeal affirmed the Superior Court, by published opinion dated June 23, 2016.

PROPERTY DESCRIPTION

The subject property is an approximately 19,000 square foot lot located on the Southeast corner of 98th Avenue and Kitty Lane (on the eastern loop of Kitty Lane) containing an approximately 6,100 square foot industrial building with a surface parking lot. The neighborhood is primarily industrial in character in all directions with some lighter commercial activities to the east.

PROJECT DESCRIPTION

The proposal includes improvements to an existing industrial building for use as a crematorium. As noted above in the Summary, the proposal was granted a Zoning Clearance in August of 2011 because the proposed activity was a permitted activity in the CIX-2 Zone and no discretionary zoning permits

¹ Section 17.102.040(a), which has since been amended, provided: "Whenever any subsisting building permit or sign permit has been lawfully issued beforehand ... neither the original adoption of the zoning regulations nor the adoption of any subsequent rezoning or other amendment thereto shall prohibit the construction, other development or change, or use authorized by said permit or agreement...."

were required at the time. Subsequent to the Zoning Clearance, the Applicant applied for a building permit to move forward with the required improvements to the building in order to establish the proposed crematorium. The building permit was issued on May 10, 2012, but the Applicant was unable to use it upon the Zoning Administrator's May 16, 2012 administrative determination that the Ordinance required the Applicant to obtain a Conditional Use Permit, as discussed below.

CITY COUNCIL EMERGENCY ORDINANCE AND SUBSEQUENT AMENDMENTS TO THE PLANNING CODE

On May 15, 2012, the City Council adopted Emergency Ordinance No. 13115, C.M.S., which established interim controls that require a Major Conditional Use Permit pursuant to Oakland Planning Code Chapter 17.134 prior to establishing or expanding crematorium uses.

The Emergency Ordinance provided that it would remain in effect for a period of one year or until the City Council adopted permanent controls for crematorium uses. The City Council subsequently extended the Emergency Ordinance while the City considered amendments to the Planning Code. In 2014, the City Council adopted amendments to the Planning Code, particularly to section 17.10.240(B), to provide that crematoria are, like cemeteries, mausoleums and columbaria, Extensive Impact Civic Activities for which a Major Conditional Use Permit is required.

ZONING ADMINISTRATOR DETERMINATION AND PLANNING COMMISSION ACTION ON THE APPEAL

On May 16, 2012, immediately following the adoption of the Emergency Ordinance, the Planning Director issued a letter informing the Applicant that the proposed crematorium at 9850 Kitty Lane is subject to the ordinance and, as a result, the Applicant cannot proceed with any development or establishment of a crematorium in reliance on the building permit or otherwise without applying for, and obtaining a Major Conditional Use Permit in accordance with Oakland Planning Code Chapter 17.134.

On May 29, 2012, the Applicant submitted an appeal of the Planning Director's determination that the proposed crematorium activity requires a Major Conditional Use Permit due to the passing of Emergency Ordinance #13115 by the Oakland City Council (see attached). Several entities and individuals urged the Planning Commission to deny the appeal, raising environmental and other concerns. The Appellant offered rebuttal evidence. The Appellant also asserted it had a vested right to use the building permit pursuant to Oakland Planning Code section 17.102.040(a). At that time, Planning Code section 17.102.404(a) provided that the City may not adopt and apply regulations to "prohibit" a project after issuance of a building permit. The Appellant argued that this provision precluded application of the Ordinance to it since it had obtained a building permit prior to the adoption of the Ordinance. After debating the matter, the Planning Commission decided, by a 3 to 2 vote, to deny the appeal and ruled that a Major Conditional Use Permit was required pursuant to the Ordinance.

LITIGATION

On August 31, 2012, the Applicant filed suit. It alleged numerous causes of action. In the first set of claims, Stewart sought writs of mandate that (1) Stewart has a vested right to its building permit and therefore that the Ordinance is unenforceable as to Stewart, and (2) the Ordinance is facially invalid and cannot be applied to anyone. The Superior Court (1) ruled that the City may not apply the Ordinance to Stewart because Stewart obtained a vested right under Oakland Planning Code section 17.102.040(a) upon issuance of the building permit and (2) that it did not need to rule on the facial validity of the

Ordinance, reasoning that by precluding application of the Ordinance against Stewart, Stewart will obtain sufficient relief.²

On September 26, 2014, the Court entered the Judgment and issued a Writ of Mandate obligating the City to honor the building permit, including by the Planning Commission setting aside its decision denying Stewart's administrative appeal and instead granting the appeal.

The City appealed the Judgment to the First District Court of Appeal. After briefing and oral argument, the Court of Appeal affirmed the Superior Court, by published opinion dated June 23, 2016 (see <http://www.courts.ca.gov/opinions/documents/A143417.PDF>).

The litigation has concluded, and the Judgment and Writ are now final.

The attached Writ—the formal document commanding the City to take certain actions—states that the Planning Commission shall:

1. **Set aside and vacate the Planning Commission's August 29, 2012 decision** denying the appeal of Stewart Enterprises, Inc. ("Stewart") from the May 16, 2012 administrative determination by Respondent City that Ordinance 13115, an emergency ordinance that requires obtaining a major Conditional Use Permit in order to establish or expand a crematorium ("Ordinance"), applied to Stewart's proposed crematorium and, instead,
2. **Enter an order sustaining Stewart's appeal**, pursuant to the Court's Order Granting Petition for Writ of Administrative Mandamus filed August 29, 2013, on the basis that, as a matter of law, Stewart's previously issued building permit is not subject to the Ordinance (or extensions thereto), and that Stewart may proceed with its project pursuant to the valid building permit issued by the City on May 10, 2012, without the need to obtain a major Conditional Use Permit. [Emphasis added.]

CONCLUSION

Stewart successfully obtained judicial relief commanding the Planning Commission to reverse its August 29, 2012 decision that Stewart may not use its building permit to construct a crematorium at 9850 Kitty Lane unless it applies for a major Conditional Use Permit. However, this decision is limited to Stewart, as it obtained a building permit prior to adoption of the City Council's May 10, 2012 adoption Emergency Ordinance and subsequent amendment of the Oakland Planning Code. Any other applicant to construct a crematorium must apply for a Major Conditional Use Permit.

RECOMMENDATIONS:

Comply with the Writ of Mandate by:

1. Setting aside and vacating the Planning Commission's August 29, 2012 decision denying the appeal from the May 16, 2012 administrative determination that Ordinance 13115 applied to Stewart and,

² In the second set of claims, Stewart sought damages, including for inverse condemnation and for equal protection and due process violations. After the Court ruled on the writ claims, the City filed a motion for summary judgment as to the damage claims. Stewart dismissed those claims rather than oppose the motion for summary judgment.

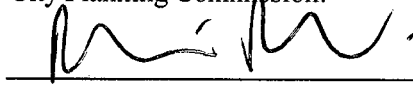
2. Sustaining Stewart's appeal.

Prepared by:



ROBERT D. MERKAMP
Development Planning Manager

Approved for forwarding to the
City Planning Commission:



DARIN RANELLETTI, Interim Director
Planning and Building Department

ATTACHMENTS:

- A. Administrative Appeal
- B. Judgment
- C. Writ

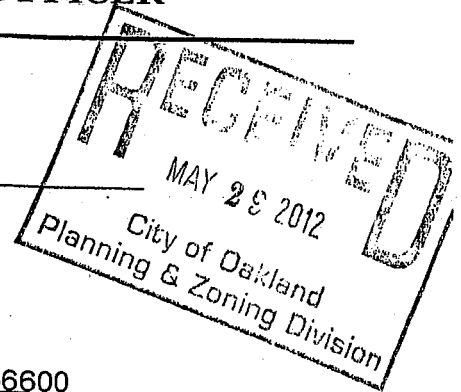
ATTACHMENT A



CITY OF OAKLAND APPEAL FORM FOR DECISION TO PLANNING COMMISSION, CITY COUNCIL OR HEARING OFFICER

PROJECT INFORMATION

Case No. of Appealed Project: Building Permit B1200987
Project Address of Appealed Project: 9850 Kitty Lane, Oakland, CA
Assigned Case Planner/City Staff: Scott Miller



APPELLANT INFORMATION:

Printed Name: Les Hausrath/Todd Williams Phone Number: (510) 834-6600
Mailing Address: 1111 Broadway, 24th Floor Alternate Contact Number: (510) 622-7630
City/Zip Code Oakland, CA 94607 Representing: Stewart Enterprises, Inc.
Email: lhausrath@wendel.com / tawilliams@wendel.com

An appeal is hereby submitted on:

- AN ADMINISTRATIVE DECISION (APPEALABLE TO THE CITY PLANNING COMMISSION OR HEARING OFFICER)**

YOU MUST INDICATE ALL THAT APPLY:

- Approving an application on an Administrative Decision
- Denying an application for an Administrative Decision
- Administrative Determination or Interpretation by the Zoning Administrator
- Other (please specify) _____

Please identify the specific Administrative Decision/Determination Upon Which Your Appeal is Based Pursuant to the Oakland Municipal and Planning Codes listed below:

- Administrative Determination or Interpretation (OPC Sec. 17.132.020)
- Determination of General Plan Conformity (OPC Sec. 17.01.080)
- Design Review (OPC Sec. 17.136.080)
- Small Project Design Review (OPC Sec. 17.136.130)
- Minor Conditional Use Permit (OPC Sec. 17.134.060)
- Minor Variance (OPC Sec. 17.148.060)
- Tentative Parcel Map (OMC Section 16.304.100)
- Certain Environmental Determinations (OPC Sec. 17.158.220)
- Creek Protection Permit (OMC Sec. 13.16.450)
- Creek Determination (OMC Sec. 13.16.460)
- City Planner's determination regarding a revocation hearing (OPC Sec. 17.152.080)
- Hearing Officer's revocation/impose or amend conditions (OPC Secs. 17.152.150 &/or 17.156.160)
- Other (please specify) _____

(continued on reverse)

(Continued)

- A DECISION OF THE CITY PLANNING COMMISSION (APPEALABLE TO THE CITY COUNCIL)** Granting an application to: OR Denying an application to:

YOU MUST INDICATE ALL THAT APPLY:

Pursuant to the Oakland Municipal and Planning Codes listed below:

- Major Conditional Use Permit (OPC Sec. 17.134.070)
- Major Variance (OPC Sec. 17.148.070)
- Design Review (OPC Sec. 17.136.090)
- Tentative Map (OMC Sec. 16.32.090)
- Planned Unit Development (OPC Sec. 17.140.070)
- Environmental Impact Report Certification (OPC Sec. 17.158.220F)
- Rezoning, Landmark Designation, Development Control Map, Law Change (OPC Sec. 17.144.070)
- Revocation/impose or amend conditions (OPC Sec. 17.152.160)
- Revocation of Deemed Approved Status (OPC Sec. 17.156.170)
- Other (please specify) _____

FOR ANY APPEAL: An appeal in accordance with the sections of the Oakland Municipal and Planning Codes listed above shall state specifically wherein it is claimed there was an error or abuse of discretion by the Zoning Administrator, other administrative decisionmaker or Commission (Advisory Agency) or wherein their/its decision is not supported by substantial evidence in the record, or in the case of Rezoning, Landmark Designation, Development Control Map, or Law Change by the Commission, shall state specifically wherein it is claimed the Commission erred in its decision.

You must raise each and every issue you wish to appeal on this Appeal Form (or attached additional sheets). Failure to raise each and every issue you wish to challenge/appeal on this Appeal Form (or attached additional sheets), and provide supporting documentation along with this Appeal Form, may preclude you from raising such issues during your appeal and/or in court. However, the appeal will be limited to issues and/or evidence presented to the decision-maker prior to the close of the public hearing/comment period on the matter.

The appeal is based on the following: *(Attach additional sheets as needed.)*

See attached Statement of Reasons

Supporting Evidence or Documents Attached. *(The appellant must submit all supporting evidence along with this Appeal Form; however, the appeal will be limited evidence presented to the decision-maker prior to the close of the public hearing/comment period on the matter. See attached Evidence*

(Continued on reverse)

(Continued)

Todd Williams

Signature of Appellant or Representative of
Appealing Organization

5/29/12

Date

.....
Date/Time Received Stamp Below:

Below For Staff Use Only

Cashier's Receipt Stamp Below:
.....

STATEMENT OF APPEAL GROUNDS

Stewart Enterprises, Inc. ("Stewart") appeals the Administrative Determination dated May 16, 2012, suspending the duly issued building permit (Application No. B1200987) dated May 10, 2012 in light of the Emergency Ordinance ("EO") adopted on May 15, 2012 by the City Council and purporting to require a major conditional use permit (CUP) for a crematorium at 9850 Kitty Lane, on the following independent and alternative grounds:

1. Pursuant to Oakland Municipal Code ("OMC") section 17.102.040 (which vests issued building permits from changes to zoning regulations), the EO is not effective to support suspension of the permit or to require a major CUP as to crematorium at 9850 Kitty Lane (the "facility"). The City acknowledged that the building permit – which clearly disclosed a crematorium use – for the facility was issued on May 10, 2012, five days prior to the adoption of the EO.

Under the applicable CIX-2 zoning at the time the building permit was issued, a crematorium was a permitted use and no CUP was required (under both a light or general manufacturing use class) as the facility is located over 300 feet from a residential zone. (The facility is located over 1,000 feet from the nearest residential zone.)

Further Stewart relied on an earlier issued zoning clearance by the City (No. ZC111983, issued 8/30/11) – which also clearly identified a crematory use – to purchase the building at 9850 Kitty Lane. The zoning clearance determined that the application was consistent with the existing zoning and general plan and was exempt from CEQA. In addition, the Bay Area Air Quality Management District ("BAAQMD"), the agency with jurisdiction over air quality and emissions regulation, granted Stewart an Authority to Construct on November 8, 2011.

2. Stewart established vested rights under California law due to obtaining a building permit and expenditure of money in reliance on the building permit, including its purchase of the building, entering a construction contract to remodel the facility, preparation of plans and the purchase of equipment. As such, pursuant to Section 4 of the EO, the EO does not apply to Stewart.

3. Since the building permit was issued to Stewart prior to adoption of the EO, pursuant to Section 3 of the EO, a major CUP would only be required if Stewart chooses to expand operations beyond those permitted prior to the adoption of the EO.

4. The EO is invalid and void ab initio and thus does not provide grounds for suspending the building permit and requiring a major CUP for the facility for the following reasons:

A. Adoption of the EO for 1-year in the first instance conflicts with California Government Code section 65858(a) and (b) which provide that an interim ordinance may not be in effect beyond 45 days from the time of initial adoption

The EO further conflicts with Government Code section 65858(a) since the EO was adopted to prevent a use that is not in conflict with any contemplated general plan, specific plan or zoning proposal currently being considered by the City.

B. The legislative findings contained in the EO and required by Government Code section 65858(c) and City Charter section 213 regarding a current and immediate threat to the public health, safety, or welfare and that approval of additional permits for

crematory use would result in that threat to public health, safety, or welfare are inadequate, unsupported, lack a rational basis and constitute a prejudicial abuse of discretion.

i. The EO's findings are unsupported, speculative, irrational, arbitrary and capricious, and false.

a. There is no showing of emergency whatsoever. The distance from the nearest residential district to the facility is over 1,000 feet (more than three times the distance that would necessitate a use permit under CIX-2 zoning for light or general manufacturing uses).

b. BAAQMD – the agency charged with air quality jurisdiction and regulation and with expertise regarding such issues – granted approval in November 2011 for the facility.

c. Existing crematoriums in the City of Oakland have operated for decades in the Piedmont Avenue area without any evidence of complaints. The same model or similar machines manufactured by the same company currently operate at other Oakland locations.

d. There is no showing that a crematorium use results in any negative economic impact on surrounding properties, or would displace retail activities or compromise economic opportunities as evidenced by the thriving retail and commercial uses in areas adjacent to crematoriums operating in Emeryville and the Piedmont Avenue area. (The facility is not located within the Airport Area Gateway Specific Plan area.)

e. There is no evidence to support unfounded claims that diesel trucks trips would result from transportation of bodies to the facility since diesel trucks are not used for such purposes and the facility will utilize vans and average fewer than 10 trips per day on an annual basis.

C. Adoption of the EO, based on the inadequate findings and lack of rational basis, violates OMC section 17.144.020 and Government Code section 65853, providing that the City Council may not amend zoning regulations without a report and recommendation from the Planning Commission. No such report or recommendation was sought or obtained. In doing so the Council circumvented the expertise of the Planning Commission and foreclosed an opportunity for public input regarding a proposed amendment to the zoning code. Further, the title of the ordinance was changed at the last minute and without justification from "interim" to "emergency" as a pretext since no emergency existed.

D. In adopting the EO, the City Council acted in excess of its jurisdiction since air quality issues and emissions regulation allegedly underlying the EO are the province of BAAQMD. BAAQMD granted approval to construct the facility in November 2011 and imposed conditions addressing emissions issues pursuant to its authority.

5. The Administrative Determination based on the City Council's adoption of the EO violates Stewart's civil rights by depriving it of its constitutional procedural due process rights, equal protection rights and constitutes a taking without just compensation. The Administrative Determination and adoption of the EO improperly and illegally targets a single project that already obtained all necessary approvals, and the Administrative Determination and

EO were issued/adopted without any rational basis and constitute a prejudicial abuse of discretion.

6. The City is estopped from suspending the building permit and use through the Administrative Determination and applying the EO to Stewart since Stewart justifiably relied to its detriment on the zoning clearance and building permit as the City was aware Stewart would rely, and intended it to rely, on these actions, and no legitimate public policy is served by the Administrative Determination.

Evidence supporting this appeal has been submitted herewith, along with the appropriate appeal form and fee.

ATTACHMENT B

1 Les A. Hausrath (Bar No. 57253)
Thiele R. Dunaway (Bar No. 130953)
2 Todd A. Williams (Bar No. 197489)
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5 lhausrath@wendel.com / rdunaway@wendel.com
tawilliams@wendel.com

6 Attorneys for Plaintiffs Stewart Enterprises, Inc.
7 and SE Combined Services of California, Inc.

8 SUPERIOR COURT OF THE STATE OF CALIFORNIA

9 COUNTY OF ALAMEDA

10
11 STEWART ENTERPRISES, INC.,
and SE COMBINED SERVICES OF
12 CALIFORNIA, INC.,

13 Petitioners and Plaintiffs,

14 vs.

15 CITY OF OAKLAND, a municipal
corporation;
16 THE CITY COUNCIL OF THE CITY OF
OAKLAND, its governing body; and
17 THE PLANNING COMMISSION OF THE
CITY OF OAKLAND

18 Respondents and Defendants.
19

Case No. RG12646176

ASSIGNED FOR ALL PURPOSES TO:
JUDGE EVELIO GRILLO, DEPT. 31

PEREMPTORY WRIT OF MANDATE

Action Filed: August 31, 2012
Trial Date:

20
21 Judgment having been entered in this proceeding against Defendant City of Oakland, the
22 City Council of the City of Oakland and the Planning Commission of the City of Oakland
23 ("Respondents") ordering that a peremptory writ of mandate be issued from this Court, and in
24 consideration of the Judgment, ~~and~~ the Court's Order Granting Petition for Writ of Administrative

25 Mandamus, dated August 29, 2013, *and the Court's Order Resolving Dispute Over Terms*

26 IT IS HEREBY ORDERED that, immediately upon service of this peremptory writ,
of Writ of Administrative Mandamus and Judgment, dated September 26, 2014

27 Respondent Planning Commission and City of Oakland shall:
28

Wendel, Rosen, Black & Dean LLP
1111 Broadway, 24th Floor
Oakland, California 94607-4036

1 1. Set aside and vacate the Planning Commission's August 29, 2012 decision denying
2 the appeal of Stewart Enterprises, Inc. ("Stewart") from the May 16, 2012 administrative
3 determination by Respondent City that Ordinance 13115, an emergency ordinance that requires a
4 obtaining a major conditional use permit in order to establish or expand a crematorium
5 ("Ordinance"), applied to Stewart's proposed crematorium and, instead,

6 2. Enter an order sustaining Stewart's appeal, pursuant to the Court's Order Granting
7 Petition for Writ of Administrative Mandamus filed August 29, 2013, on the basis that, as a matter
8 of law, Stewart's previously issued building permit is not subject to the Ordinance (or extensions
9 thereto), and that Stewart may proceed with its project pursuant to the valid building permit issued
10 by the City on May 10, 2012, without the need to obtain a major conditional use permit.

11 This Court will retain jurisdiction over Respondents' proceedings by way of a return to this
12 peremptory writ of mandate until the Court has determined that Respondents have complied with
13 the writ and have taken those actions necessary to comply with the Court's Order Granting
14 Petition for Writ of Administrative Mandamus, the Judgment entered by the Court, this
15 peremptory writ of mandate, and applicable law. Respondents must file a return to this writ no
16 later than 60 days from its date of issuance.

17 ~~BY ORDER OF THE COURT, THIS PEREMPTORY WRIT SHALL BE ISSUED.~~

18 ~~DATED: _____, 2014~~

20 By: _____

~~Honorable Evelio Grillo
Judge of the Superior Court~~

21 SEP 29 2014

22 DATED: _____, 2014

CLERK OF THE SUPERIOR COURT
COUNTY OF ALAMEDA

Leah T. Wilson

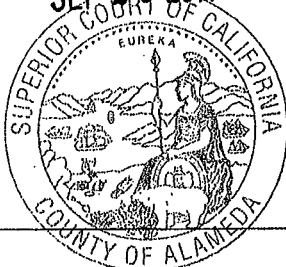
Clerk of the Court

25 Dated:

26 SEP 29 2014

27 By

Scott Sanchez
Deputy Clerk



ATTACHMENT C

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2 Todd A. Williams (Bar No. 197489)
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6 Attorneys for Plaintiffs Stewart Enterprises, Inc.
7 and SE Combined Services of California, Inc.

8 SUPERIOR COURT OF THE STATE OF CALIFORNIA

9 COUNTY OF ALAMEDA

10
11 STEWART ENTERPRISES, INC., et al.,

12 Plaintiffs,

13 vs.

14 CITY OF OAKLAND, a municipal
corporation, et al.,

15 Defendants.

Case No. RG12646176

**ASSIGNED FOR ALL PURPOSES TO:
JUDGE EVELIO GRILLO, DEPT. 31**

**NOTICE OF ENTRY OF JUDGMENT
GRANTING PEREMPTORY WRIT OF
MANDATE**

Action Filed: August 31, 2012
Trial Date: TBD

16
17
18 **TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:**

19 PLEASE TAKE NOTICE that a Judgment Granting Peremptory Writ of Mandate in the
20 above-entitled case was entered on September 26, 2014. A true and correct copy of the Judgment
21 is attached hereto as **Exhibit A**.

22
23 DATED: September 30, 2014

WENDEL, ROSEN, BLACK & DEAN LLP

24
25 By: 

26 Todd A. Williams
27 Attorneys for Plaintiffs Stewart Enterprises, Inc.
and SE Combined Services of California, Inc.
28

EXHIBIT A




12106353

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FILED
ALAMEDA COUNTY

SEP 26 2014

By 

6 Attorneys for Plaintiffs Stewart Enterprises, Inc.
7 and SE Combined Services of California, Inc.

8 SUPERIOR COURT OF THE STATE OF CALIFORNIA.

9 COUNTY OF ALAMEDA

Wendel, Rosen, Black & Dean LLP
1111 Broadway, 24th Floor
Oakland, California 94607-4036

10
 11 STEWART ENTERPRISES, INC.,
 and SE COMBINED SERVICES OF
 12 CALIFORNIA, INC.,
 13 Plaintiffs,
 14 vs.
 15 CITY OF OAKLAND, a municipal
 corporation;
 16 THE CITY COUNCIL OF THE CITY OF
 OAKLAND, its governing body;
 17 THE PLANNING COMMISSION OF THE
 CITY OF OAKLAND,
 18 and DOES 1 through 30, inclusive,
 19 Defendants.

Case No. RG12646176
ASSIGNED FOR ALL PURPOSES TO:
JUDGE EVELIO GRILLO, DEPT. 31

**~~PROPOSED~~ JUDGMENT GRANTING
PEREMPTORY WRIT OF MANDATE**

Action Filed: August 31, 2012
Trial Date: TBD

1 This Court has resolved each of the causes of action alleged by Petitioners and Plaintiffs
2 Stewart Enterprises, Inc. and SE Combined Services of California, Inc. ("Petitioners") against
3 Respondents and Defendants the City of Oakland, the City Council of the City of Oakland, and the
4 Planning Commission of the City of Oakland ("Respondents") as follows:

5 1. By Order filed December 24, 2012, regarding Respondents' demurrer to
6 Petitioners' original Petition for Writ of Mandate [and] Complaint for Declaratory and Injunctive
7 Relief and Damages ("Original Petition/Complaint"), this Court (a) sustained the demurrer with
8 leave to amend as to the second cause of action for administrative mandamus under a common law
9 vested right theory; (b) sustained the demurrer with leave to amend as to the eighth cause of action
10 for inverse condemnation; (c) sustained without leave to amend the demurrer to the 11th cause of
11 action for injunctive relief; and (d) overruled the demurrer in all other aspects and to all other
12 causes of action.

13 2. On August 29, 2013, after having reviewed the administrative record of Respondents'
14 proceedings in this matter, materials subject to judicial notice, the parties' briefs submitted by
15 counsel, and the arguments of counsel at the hearing, and the matter having been submitted for
16 decision, this Court filed its Order Granting Petition for Writ of Administrative Mandamus
17 ("Order"), granting Petitioners' Petition For Writ of Administrative Mandamus as to the first
18 cause of action alleged in the Original Petition/Complaint and ordering that a peremptory writ of
19 mandate issue in this proceeding as set forth in the Order. The Court found it unnecessary to
20 address the third through sixth causes of action for a writ of traditional mandamus, and denied
21 those four claims "without prejudice as moot" in light of the Court's ruling on the first cause of
22 action for writ of administrative mandate.

23 3. On December 9, 2013, Petitioners filed a First Amended and Supplemental Verified
24 Petition for Writ of Mandate and Complaint for Declaratory and Injunctive Relief and Damages
25 ("FAP/FAC") which restated several causes of action from the Original Petition/Complaint and
26 added an amended cause of action. The restated claims in the FAP/FAC include, inter alia, (a) the
27 first cause of action for a writ of administrative mandate, (b) the four traditional mandamus claims
28 (restated as the second, third, fourth and fifth causes of action), (c) the sixth cause of action for

1 alleged due process and equal protection violations (per 42 U.S.C. § 1983), (c) the seventh cause
2 of action (equitable estoppel), and (d) the ninth cause of action (declaratory relief). The FAP/FAC
3 included an amended eighth cause of action for inverse condemnation. The FAP/FAC neither
4 alleged an amended cause of action for a writ of mandate based on common law vested rights (the
5 second cause of action from the Original Petition/Complaint) nor an amended cause of action for
6 injunctive relief (the eleventh cause of action from the Original Petition/Complaint) for which
7 Respondents' demurrer was sustained without leave to amend.

8 4. On August 29, 2014, Petitioners filed a Request for Dismissal to dismiss, without
9 prejudice, the sixth, seventh, eighth and ninth causes of action in the FAP/FAC, which this Court
10 granted.

11 IT IS HEREBY ORDERED, ADJUDGED AND DECREED that:

12 1. Judgment be entered in favor of Petitioners as to the First Cause of Action of the
13 FAP/FAC for a writ of administrative mandamus in accordance with the Court's Order Granting
14 Petition for Writ of Administrative Mandamus dated August 29, 2013.

15 2. The causes of action for a writ of traditional mandamus (the Second, Third and
16 Fourth and Fifth Causes of Action of the FAP/FAC) are denied without prejudice as moot in light
17 of the Court's granting of the petition for writ of administrative mandamus as to the first cause of
18 action.

19 3. All other causes of action in the FAP/FAC have been dismissed.

20 4. A peremptory writ of mandate, in the form attached hereto, shall issue immediately
21 under the seal of this Court directed to Respondents (a) commanding Respondent Planning
22 Commission of the City of Oakland to set aside and vacate its August 29, 2012 decision denying
23 the appeal of Stewart Enterprises, Inc. ("Stewart") from the May 16, 2012 administrative
24 determination by Respondent City that Ordinance 13115, an emergency ordinance that requires
25 obtaining a major conditional use permit in order to establish or expand a crematorium
26 ("Ordinance"), applied to Stewart's proposed crematorium and, instead, (b) enter an order
27 sustaining Stewart's appeal, pursuant to the Court's Order Granting Petition for Writ of
28 Administrative Mandamus filed August 29, 2013, on the basis that, as a matter of law, Stewart's

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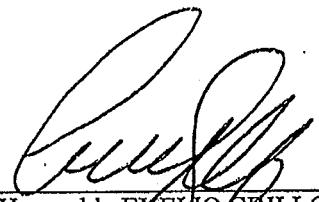
1 previously issued building permit is not subject to the Ordinance (or extensions thereto), and that
2 Stewart's may proceed with its project pursuant to the valid building permit issued by the City on
3 May 10, 2012, without the need to obtain a major conditional use permit.

4 5. Petitioners be awarded their costs of suit in the amount of _____;

5 6. The Court reserves jurisdiction to determine, upon motion by Petitioners, whether
6 to award attorneys' fees to Petitioners pursuant to applicable law, and, if so, in what amount; and

7 7. The Court reserves jurisdiction to determine, by return to the peremptory writ of
8 mandate, whether Respondents have taken those actions necessary to comply with the Court's
9 Order Granting Petition for Writ of Administrative Mandamus, this Judgment, the Peremptory
10 Writ of Mandate, and applicable law.

11
12 Dated: September 26, 2014



Honorable EVELIO GRILLO
Judge of the Superior Court

13
14
15 APPROVED AS TO FORM:
16 BURKE, WILLIAMS & SORENSEN LLP

17
18
19 By: _____
20 Kevin D. Siegel, Esq.
21 Attorneys for Respondents and Defendants
22 THE CITY OF OAKLAND, THE CITY
23 COUNCIL OF THE CITY OF OAKLAND,
24 and THE PLANNING COMMISSION OF
25 THE CITY OF OAKLAND
26
27
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PROOF OF SERVICE

STATE OF CALIFORNIA, COUNTY OF ALAMEDA

At the time of service, I was over 18 years of age and not a party to this action. I am employed in the County of Alameda, State of California. My business address is 1111 Broadway, 24th Floor, Oakland, CA 94607-4036.

On September 30, 2014, I served true copies of the following document(s) described as **NOTICE OF ENTRY OF JUDGMENT GRANTING PEREMPTORY WRIT OF MANDATE** on the interested parties in this action as follows:

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BY MAIL: I enclosed the document(s) in a sealed envelope or package addressed to the persons at the addresses listed in the Service List and placed the envelope for collection and mailing, following our ordinary business practices. I am readily familiar with Wendel, Rosen, Black & Dean LLP's practice for collecting and processing correspondence for mailing. On the same day that correspondence is placed for collection and mailing, it is deposited in the ordinary course of business with the United States Postal Service, in a sealed envelope with postage fully prepaid. I am a resident or employed in the county where the mailing occurred. The envelope was placed in the mail at Oakland, California.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on September 30, 2014, at Oakland, California.

Carol A. Bagshawe