

SUMMARY OF LAW FOR APPEAL BOARDS, INVALIDATING RED TAGS AND COUNTY CIVIL PENALTIES

September 1, 2008 – An important summarized explanation has been generously provided in order to help explain what has happened to homeowners, contractors, realtors and property owners “under the misguided Santa Cruz County local government”. This will clarify your rights and enable you to begin to prepare to rectify, find recourse and restitution for your situation.

The Santa Cruz County Code contains the following sections:

12.10.435 Appeals.

All appeals of actions taken pursuant to the provisions of this chapter shall be made in conformance with the procedures set forth in Chapter 12.12. The Building and Fire Code Appeals Board shall have no authority relative to interpretation of the administrative provisions of this code nor shall the Board be empowered to waive requirements of this code. (Ord. 4894 § 2 (part), 11/20/07)

12.12.010 Appeals to Building and Fire Code Appeals Board.

(Note this ordinance is altered by the Supervisors away from wording that allows appeals for all/any reasons allowed by preemptive State Code 108.8. State Code 108.8 has superior standing to protect you.)

Any property owner or other person aggrieved, or any person whose interests are adversely affected by any of the following acts or determinations of the Building Official or of any other employee charged with the administration and enforcement of the provisions of Chapter 12.10 may appeal the act or determination as hereunder provided to the Building and Fire Code Appeals Board created by Chapter 2.100 of this Code:

- (a) Determinations of the suitability of alternate building materials and methods of construction for use in this County.
- (b) Interpretations of the provisions of the Uniform Codes adopted by Chapter 12.10 of the Santa Cruz County Code.
- (c) Actions taken in the enforcement of the requirements of Sections 19955, et seq., of the Health and Safety Code relating to access to public accommodations by persons with disabilities.

The Building and Fire Code Appeals Board shall have no authority to amend, waive, or otherwise modify the requirements of this title or of the Uniform Codes adopted under this title. (Ord. 4389A, 4/2/96) (Ord. 2281, 4/20/76; Ord. 2368, 12/7/76; 4202, 6/2/92; 4353, 2/14/95)

12.12.020 Notice of Appeal.

(a) Appeals to the Building Appeals Board shall be taken by filing a written Notice of Appeal with the Building Official within fourteen calendar days after the day on which the act or determination appealed from was made. *(NOTE THAT 14 DAYS WILL BE REQUIRED TO BE CHANGED TO TWO YEARS DUE TO THE COUNTY HIDING AND WITHHOLDING RELIEF AND OBSTRUCTING DUE PROCESS.)*

(b) In computing the time within which the Notice of Appeal shall be filed, the day on which the act was taken or determination was made shall be excluded.

(c) The filing fee established by Resolution of the Board of Supervisors shall accompany the Notice of Appeal. (Ord. 2281, 4/20/76; Ord. 2551, 4/18/78; 4500-C, 8/4/98)

12.12.030 Effect of filing Notice.

Filing of the Notice of Appeal shall have the effect of staying the issuance of any permit or other action taken by the Building Official provided for by the terms of this title until such time as the matter is disposed of on appeal. (Ord. 2281, 4/20/76)

In spite of these local laws, County Counsel, the Supervisors, County planning and building staff have violated the civil rights of every citizen, who has and were the first to discover and apply for appeals, by denying them their legal right to an appeal. They have violated the civil rights of every citizen who has not yet filed for an appeal as they have yet not been informed of the two appeal boards required by State Statute 108.8.

The question is: why are the Board of Supervisors, County Counsel and the Planning Dept. allowing this unconstitutional behavior to continue? Do the citizens of this County have to continually sue the County government to force them to observe and follow the law?

Earlier this year the Board of Supervisors received petitions from some local farmers and homeowners on the issue of civil penalties. This is a letter explaining the issue of the Housing Appeals Board and the Building Appeals Board. This letter only addresses the HOUSING APPEALS BOARD and civil penalties because it seems that the Board now understands the necessity of the Building Appeals Board.

Property owners, first of all, understand legally that the County of Santa Cruz Hearing Officer has no jurisdiction to hearing HOUSING CODE complaints because only buildings have been declared to be “substandard buildings” or actions declaring a misdemeanor that are being handled by the District Attorney’s Office are allowed under state law. Since, those are the only two allowable ways to enforce violations of regulations on existing buildings or there uses then COUNTY HEARING OFFICERS are prohibited under state law to hold hearings under Santa Cruz County Code § 1.12.070. A substandard building must be declared to be substandard under the UNIFORM HOUSING CODE which prescribes the process, form, and penalties from commencement to completion.

Health and Safety Code § 17922(g) is set out below:

“A local ordinance may not permit any action or proceeding to abate violations of regulations governing maintenance of existing buildings, unless the building is a substandard building or the violation is a misdemeanor.”

NOTICES OF VIOLATIONS AND RED TAGS:

In addition property owners understand the following laws:

A Notice of Violation issued by the County is not a Notice and Order pursuant to the *UNIFORM HOUSING CODE* § 1101. The recordation of a Notice of Violation (County method) is not done in compliance with *UNIFORM HOUSING CODE* § 1102. County Hearings are not being held in accordance with Health and Safety Code § 17920.6 which requires a HOUSING APPEALS BOARD. The *UNIFORM HOUSING CODE* § 203 creates a local HOUSING APPEALS BOARD and its make up. The *UNIFORM HOUSING CODE* § 1301 states the general procedures for the hearing and Section 1301.1 states who can hear the appeals. The County Hearing Officer is not among the designated examiners. The definition of a substandard building is stated in Health and Safety Code § 17920.3 and the local definition cannot conflict with that definition as per Article XI § 7 of the State Constitution. The *Uniform Housing Code* is the preemptive law of the state for occupancy standards – *Briseno v. City of Santa Ana* (1992) 6 Cal.App.4th 1378 at page 1381-1382.

Health and Safety Code § 17922 and Health and Safety Code § 17958 together require local governments to adopt the statewide Uniform Building Codes, Uniform Housing Code and California Building Standards Code. The Legislature has shown its intent to preempt local governments from legislating on the subject, except as narrowly permitted under the Health and Safety Code - *Leslie v. Superior Court* (1999) 73 Cal.App.4th 1042.

The County Counsel often cites Government Code § 53069.4 as authority for the County Hearing Officer program § 1.12.070.

Government Code § 53069.4 states:

“(a)(1) The legislative body of a local agency, as the term ‘local agency’ is defined in Section 54951, may by ordinance make any violation of any ordinance enacted by the local agency subject to an administrative fine or penalty.”

In this case the local ordinance that is adopted by the local agency is the statewide UNIFORM HOUSING CODE that the County did not adopt although it was required to be adopted by state law - Health and Safety Code § 17958.

Since, Government Code § 53069.4 does not allow the legislative body of a local agency to make the violation of a preemptive state law subject to an administrative fine or penalty, then this entire Administrative Hearing Officer procedure is void because it conflicts with state law and the County Hearing Officer program is void because a state law can be made applicable.

Article XI § 7 states:

“A county or city may make and enforce within its limits all local, police, sanitary and other ordinances and regulations not in conflict with general laws.”

Article IV § 16(b) states:

“A local or special statute is invalid in any case if a general statute can be made applicable.”

Therefore the County **cannot** issue “Notice of Violations” on existing buildings, levy fines or penalties, record Notice of Violations on real property, hold hearings, or any other action or proceeding to abate violation of regulations on existing building unless and until the County adopts and enforces the UNIFORM HOUSING CODE, Health and Safety Code 17920.3 and establishes a HOUSING APPEALS BOARD to hear and decide the issues appealed by the property owners.

In addition, Health and Safety Code § 17980 et seq. establishes the statewide enforcement procedure for violations of building codes and standards. If the County did establish its own enforcement standards then the County ordinances would be void as stated above because the local laws conflict with state laws and because state laws can be made applicable.

Also, the County has adopted penalties and fines that administrated by the County Hearing Officer that conflict with the state law on penalties for building and housing code violations as found in Health and Safety Code § 17995 et seq.

STATUTE OF LIMITATIONS

The statute of limitations for civil actions is found in Code of Civil Procedure § 338(a). The statute of limitations for misdemeanors is found in Penal Code § 802.

Since violation of regulations on the use and maintenance of existing building can only be abated if the building is a substandard building (pursuant to Health and Safety Code § 17920.3) or a misdemeanor, then those are the applicable statutes of limitations which the County of Santa Cruz **does not acknowledge**.

UNCONSTITUTIONAL ENFORCEMENT

The County and its employees are acting individually and jointly to deprive owners of their constitutionally vested property rights to the use of buildings acquired before the County adopted its general plan or current building codes. The current General Plan was adopted in 2007 and the buildings and uses in place at the time of adoption are “grandfathered in” and are called existing non-conforming uses. That is the uses in place at the time of adoption of the 2007 General Plan are all “grandfathered in” and the County does not want to acknowledge that fact. The County Staff wants to and likes to pretend that the law states that all buildings and uses, WHERE THE OWNER CAN PROVE WITH A PERMIT ISSUED BY THE COUNTY, are legal existing buildings and uses at the time of adoption codes or General Plan.

All buildings built before January 1, 2008 are also existing building as defined in the 2007 California Building Code adopted by your Board last November 2007.

CONCLUSION

Therefore, the Board of Supervisors should fire the employees who denied the civil rights of the citizens who requested an appeal to the Board of Building Appeals and the employee who denied a citizen his right to an appeal before the state required Housing Appeals Board. The Board of Supervisors should retrain the entire Planning Dept. to abide by the above laws, expunge all existing recorded red tags, and eliminate all but 2 code compliance personnel as their services will not be required.

Additionally, the attempted enforcement of County red-tags (Notice of Violation) on existing buildings without compliance with the UNIFORM HOUSING CODE, HOUSING APPEALS BOARD and limited to the penalties in Health and Safety Code § 17995 is a violation of DUE PROCESS OF LAW and the County will be held liable and accountable.

Harold Griffith, Paralegal, has supplied most of this information without charge, to benefit the citizens of Santa Cruz County.