

September 8, 2008

Board of Supervisors
County of Santa Cruz
701 Ocean Street
Santa Cruz, CA 95060

Agenda Date: September 9.
Subject: Report on Land Use Appeals
Item: 30

Dear Board of Supervisors:

What is the responsibility of an appeals board in regards to building permit issues?

This is a relatively simple issue; unfortunately county staff has chosen to make it complex.

The state requires that some sort of independent appeals body (or bodies) must exist in order for the public to appeal the building requirements of a jurisdiction. The Planning Commission exists for zoning issues etc... The claim that the Planning Director is an "appeal body" is incorrect.

What is Building code?

Building code is a codified requirement regarding building, county staff may call it rama-rama ding-a ling code, or bima-bama code, or even Chapter 16 code... or Chapter 11112 code, it makes no matter what county staff wishes to use as the semantics, if the code addresses the technical issues of building...it is a building requirement of some sort and thus subject to appeal to an independent body. County staff is claiming that they can merely call some issue by another "title", other than building code, and that somehow means it isn't subject to an appeal(other than staff itself); that claim is spurious.

What agency(s) administer building code?

If the board chooses to have Human Services regulate the electrical plugs in a home, and then the Sheriff department handle grading issues, well and fine. The building code is still the building code; if the county decides to have different

departments handle different parts of the building code ...fine. But it is still the building code, and subject to an appeal to an independent body (i.e. not staff).

What is an appeal and who hears it?

An appeal is a “resort or application to some higher authority”. County staff is not a higher authority to itself. When an applicant is appealing a staff decision, the appeal goes to a “higher” body. It is frankly laughable, if not fraudulent, that staff has put themselves in the position to hear appeals regarding their own actions.

As noted above, it does not matter what chapter(s) the “building” code is located in, nor does it matter what the code is called, even whether it is called code at all. The county is allowed to make more “building” code than that mandated by the state and may call it what it will and locate it in whatever section of county ordinances they wish, it is still subject to appeal under state law. If it walks like a duck...if it quacks like a duck...it is a duck.

Which leads to what may be an obvious question:

Why would the County of Santa Cruz staff or Board of Supervisors not want an appeals board of independent individuals with expertise in the subject at hand?

Clearly the professional community desires this appeals board, clearly the public wants it. But staff puts forth a disingenuous claim that this appeals board has virtually no responsibilities; that instead county staff is the appeal body of virtually every decision that *they* themselves make.

Regardless of how obvious that the state mandates an independent appeal body that does not have the limitations that staff claims, why even argue the point? Denying the right of the public for a fair hearing on these issues does no service to this community.

Justifications

I understand that Mr. Burns wants to defend himself and his department against criticism in regards to this issue and I personally do not believe that personal attacks are appropriate. But the criticism that is of a factual basis, which is the bulk of the criticism, I whole heartedly support and I believe that this report is misleading the Board and the public in regards to this issue.

As far as what other jurisdictions do, or do not do in regards to this issue, I believe the staffs’ spin on this is spurious and largely irrelevant. Since graduating university in 1985 I have never had the desire, or necessity, to appeal to any other jurisdiction’s Local Appeals Board, nor do I know any other professional that has had occasion too. But as the Board well knows, the professional community and the general public do want the ability, and has the desire, to appeal many issues to

a fair and independent body in this jurisdiction. The only thing that has “protected” this jurisdiction from these appeals is the lack of information, misinformation, and active blocking, of those appeals by county staff. The fact that other jurisdictions have had few, if any, appeals, speaks well for those jurisdictions; it is what I personally would expect, but it is in no way a justification for this county *supposed* lack of appeals.

The ex-Planning Director of the City of Santa Cruz stated at a local meeting of architects that he realized that though his department was a “shining light compared to the County of Santa Cruz” it still needed our assistance to improve. Clearly the current county staff has no desire to look to anybody for that kind of assistance, even if that assistance is mandated by the state.

Duties

One of the on going duties of the county’s Local Appeals Board is to provide suggestions for the improvements to the county codes in regards to building. Clearly that duty should have been on going... The concept that the Local Appeals Board has not met because it had no appeals or responsibilities is fallacious.

Internal Contradictions

Even if one was to accept staffs’ premise that by locating “building” code under other parts of the code some how makes it not actually a building requirement...

Page 5 Figure 2 indicates that the “Appeal Body” for “grading” is the Planning Director, while under 12.10.217 Grading is specifically noted (enclosed), which is specifically required (even under the fallacious staff report) to be heard by the Appeals Board. The internal contradictions are not limited to just this point.

Thank you for the Board’s consideration.

Sincerely,

Cove Britton
Architect