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Board of Supervisors
County of Santa Cruz
701 Ocean Street, Room 500
Santa Cruz, CA 95060

AGENDA: Nov 20, 2007 -- ITEM 54: Public Hearing (continued from NOV. 6, 2007)
Subject: Adoption of 2007 California Building Code as Santa Cruz County Building Codes

Members of the Board,

First of all, I would like to thank you for continuing this item so that some of the defects in the ordinance could be corrected. This new version is far better than the last one, although it still needs a lot of work.

On your agenda today are the related Items 53 and 54. They are related because the public is becoming increasingly aware of the exploding cost of government and the growth of the Nanny State. The cost of government is not only seen in the increasing number of employees and the amount of compensation and the pensions of those employees. The cost of government is also being felt in the increasing cost of the education required before one is allowed to get a job, the cost of gasoline taxes with little or no road repair, the cost of complying with income tax regulations and income tax return filings, the increasing cost of taxes, assessments, fees and charges (some of which are actually legal) on property and the cost of complying with development laws and building regulations. Sales taxes increase the cost of everything. These increased costs are being felt more and more as a larger part of our society is aging and retiring and as more and more jobs are being done by machines or are exported over seas.

"Amendments to Technical Code Requirements" found on page 0498 (top right) are not necessary. The County staff is pretending that the County of Santa Cruz has some unique topographical, climatic or geological conditions that may exist so that these more restrictive local building standards can be adopted. Health & Safety Code § 17958.5 allows local government amendments that:

"are reasonably necessary because of local climatic, geological, or topographical conditions.

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For purposes of this subdivision, a city and county may make reasonably necessary modifications to the requirements, adopted pursuant to Section 17922, contained in the provisions of the code and regulations on the basis of local conditions."

The County's staff's statement that local conditions may exist which necessitate more restrictive building standards is a far different than the allowable adoption of local amendments that are reasonably necessary because local conditions do exist. Thus, these local amendments should be rejected. The purpose of The Uniform Codes is to have building regulations uniform through the state unless there is a very good reason for local variation. Santa Cruz County does not a very good reason to differ from the state uniformity.

It should again be noted that, none of the codes proposed to be adopted are to be found in Health & Safety Code § 17922. County Code Sections 12.10.215(e) and 12.10.218 are the example of necessary local amendments because they lessen the unrealistic state burdens of over zealous state bureaucrats on the construction industry, consumers and homeowners. However the other local amendments should be rejected as unnecessary because they add unnecessary additional bureaucratic red-tape for no apparent gain. Like the staff report states, inspections for footing are already required and the 2007 California Building Code already includes rules for grading - why duplicate the regulations? Earthquake conditions require a more elastic structure - not a more rigid one. Slurry sealing is no more a like paving than painting is to installing siding - painting does not require a permit. These are the kinds of stupid regulations that do more harm to image of government than the good they do in protecting and helping society.

On page 0501 (top right), the County staff responds to question of whether or not the 2007 California Building Codes meet the requirements of state law (Health and Safety Code § 17922 and § 17958) by adopting the correct codes. The staff's answer is: "To the extent that any inconsistencies in the state laws exists, these will need to be corrected at the state level." This approach is not the approach taken by the California Supreme Court in *Lockyer v. City and County of San Francisco* (2004) 33 Cal. 4th 1055 at page 1086, where the Court states that it is well established that when a public official's authority to act in a particular area derives wholly from statute the scope of the authority is measured by the terms of the statute. Thus, the State Building Standard Commission cannot ignore the express requirements of Health and Safety Code § 17922 by adopting different standards and cannot require local governments to adopt those different illegal standards. Also, on page 1100 of *Lockyer*, Justice Mosk explained in his concurring and

dissenting opinion in *Southern Pacific* 18 Cal.3d 308, 319 that a public official "faithfully upholds the Constitution by complying with the mandates of the Legislature, leaving to the courts the decision whether those mandates are invalid." The State Legislature has mandated the adoption of the Uniform Housing Code, Uniform Building Codes, etc. written by the ICBO and neither the State Building Standards Commission nor the local government can legally disregard that state law.

Agenda Item 54 contemplates the local adoption of Title 24 of the California Code of Regulations – the 2007 California Building Code etc. but Health & Safety Code § 17922 (a) requires the adoption of:

"...The building standards and rules and regulations shall impose substantially the same requirements as are contained in the most recent editions of the following uniform industry codes as adopted by the organizations specified:

- (1) The Uniform Housing Code of the International Conference of Building Officials, except its definition of "substandard building."
- (2) The Uniform Building Code of the International Conference of Building Officials.
- (3) The Uniform Plumbing Code of the International Association of Plumbing and Mechanical Officials.
- (4) The Uniform Mechanical Code of the International Conference of Building Officials and the International Association of Plumbing and Mechanical Officials.
- (5) The National Fire Protection Code of the National Fire Protection Association.
- (6) Appendix Chapter 1 of the California Code for Building Conservation of the International Conference of Building Officials."

The 2007 California Building Code, etc. are not:

"substantially the same requirements as are contained in the most recent editions of the following uniform industry codes as adopted by the organizations specified:"

The most obvious phrase showing the illegality of the adoption is: as adopted by the organizations specified. The 2007 California Codes were adopted by the ICC – not the ICBO.

Now, let's look at DUE PROCESS OF LAW and VESTED PROPERTY RIGHTS. The State Constitution's Article XI § 7 states that: "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." The State Constitution Article IV § 16 (b)

states: "A local law or special law is invalid in any case if a general statute can be made applicable."

Health & Safety Code § 17922 requires the adoption of:

(16) (1) The uniform Housing Code of the International Conference of Building Officials, except its definition of "substandard building."

(16) (2) Regulations governing abatement of substandard buildings shall permit those conditions prescribed by Section 17922.3 which do not endanger the life, limb, health, property, safety, or welfare of the public or the occupant thereof.

(16) (3) 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."

Health & Safety Code § 17920.3 defines substandard buildings. How can the Health & Safety Code with one set of regulations be harmonized with the County of Santa Cruz Code if each contain different sets of regulations for existing buildings. Health & Safety Code § 17922 (g) prohibits the Board of Supervisors from adopting a local Ordinance – like § 1.42.070 or 19.01.030, 19.01.070 and 19.01.080 – processes which do not declare a building substandard or require the DA prosecute misdemeanor violations. As applied to existing buildings, the local code sections are illegal, void and conflict with state law. The procedures for declaring a building "substandard" are contained in the Uniform Housing Code – which the County has not adopted - and the Uniform Housing Code is not being considered for adoption. The state law also allows substandard conditions that do not endanger life, limb, health, property, safety or welfare of the public or occupant.

In *Briseno v. City of Santa Ana* (1992) 6 Cal.App.4th 1378 the court states on page 1382:

"It is clear that the 1970 amendments to the state housing laws evidence a legislative intent to generally preempt local regulation in the field."

In *Cedar Shake & Shingle Bureau v. City of Los Angeles* (1993) 997 F.2d 620 at page 623 the Federal Appellate Court agrees with the *Briseno* court.

The proposed local amendments page 0585 (top right) to page 0590 (top right) propose the adoption of sections of the 1997 Uniform Code for the Abatement of Dangerous Buildings for regulation of dangerous buildings, structures and geological

hazards. I could not find Section 181.8.1 of the 2007 California Building Code that the County cites as giving authority to adopt the 1997 Uniform Code for the Abatement of Dangerous Buildings. Identified above Health & Safety Code § 17922(a)(1) is the state law that requires the local adoption of the 1997 Uniform Housing Code.

Under this set of circumstances it impossible to believe that the adoption of the "1997 Uniform Code for the Abatement of Dangerous Buildings", as suggested by County staff, does not conflict with state laws

On page 0590 (top right) [page 64 of attachment 2] the proposed local code 12.10.430 Violations - duplicates Health & Safety Code § 17980 which reads:

17980. (a) If any building is constructed, altered, converted, or maintained in violation of any provision of, or in violation of any order or notice that gives a reasonable time to correct that violation issued by an enforcement agency pursuant to this part, the building standards published in the California Building Standards Code, or other rules and regulations adopted pursuant to this part, or if a nuisance exists in any building or upon the lot on which it is situated, the enforcement agency shall, after 30 days' notice to abate the nuisance or violation, or a notice to abate with a shorter period of time if deemed necessary by the enforcement agency to prevent or remedy an immediate threat to the health and safety of the public or occupants of the structure, institute any appropriate action or proceeding to prevent, restrain, correct, or abate the violation or nuisance.

(b) (1) Whenever the enforcement agency has inspected or caused to be inspected any building and has determined that the building is a substandard building or a building described in Section 17920.10, the enforcement agency shall commence proceedings to abate the violation by repair, rehabilitation, vacation, or demolition of the building. The enforcement agency shall not require the vacating of a residential building unless it concurrently requires expeditious demolition or repair to comply with this part. The building standards published in the California Building Standards Code, or other rules and regulations adopted pursuant to this part. The owner shall have the choice of repairing or demolishing. However, if the owner chooses to repair, the enforcement agency shall require that the building be brought into compliance according to a reasonable and feasible schedule for expeditious repair. The enforcement agency may require vacation and demolition or may itself vacate the building, repair, demolish, or institute any other appropriate action or proceeding, if any of the following occur:

(A) the repair work is not done within the period required by the notice.

(B) The owner does not make a timely choice of repair or demolition.

(C) The owner selects an option which cannot be completed within a reasonable period of time, as determined by the enforcement agency, for any reason, including, but not limited to, an outstanding judicial or administrative order.

(2) In deciding whether to require vacation of the building or to repair as necessary, the enforcement agency shall give preference to

the repair of the building whenever it is deemed locally feasible to do so without having to repair more than 75 percent of the dwelling, as determined by the enforcement agency, and shall give full consideration to the needs for housing as expressed in the local jurisdiction's housing element. Etc. etc. etc.

And more state enforcement regulations follow that state law section.

In *Leslie v. Superior Court* (1999) 73 Cal.App.4th 1042 at page 1046 the court states:

"A conflict exists if an ordinance "" duplicates, contradicts, or enters an area fully occupied by general law, either expressly or by legislative implication." "" (Shaw-Williams v. City of Los Angeles, supra, 4 Cal. 4th at p. 897.)"

Since this local Ordinance duplicates state law, the County may not adopt it. Can the state law be made applicable? Yes. Then the County law is void.

On page 0592 (top right) the proposed local code 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. But the County Code conflicts or duplicates the state law as shown below.

Health and Safety Code § 17920.5 and § 17920.6 state:

17920.5. As used in this part "local appeals board" means the board or agency of a city or county which is authorized by the governing body of the city or county to hear appeals regarding the building requirements of the city or county. In any area in which there is no such board or agency, "local appeals board" means the governing body of the city or county having jurisdiction over such area.

17920.6. As used in this part, "housing appeals board" means the board or agency of a city or county which is authorized by the governing body of the city or county to hear appeals regarding the requirements of the city or county relating to the use, maintenance, and change of occupancy of hotels, motels, long-term care facilities, apartment houses, and dwellings, or portions thereof, and buildings and structures accessory thereto, including requirements governing alteration, additions, repair, demolition, and moving of such buildings if also authorized to hear such appeals. In any area in which there is not such a board or agency, "housing appeals board" means the local appeals board having jurisdiction over such area.

Thus it would appear that the State law requires both a "local appeals board" and a "local housing appeals board". The proposed local ordinance is then void, being in conflict with state law, because it requires and permits neither the local code adopts a "Hearing Officer" program to enforce regulations on existing buildings which is illegal.

Santa Cruz County Code § 19.01.080 allows Code Enforcement to place a red-tag or a "Notice of Violation" on a property without a declaration as a substandard building, a conviction for a misdemeanor, or a hearing to ensure due process of law. In *Smith v. Village of Maywood* 699 F.Supp. 157 the court determined that a property owner's procedural civil rights were violated by municipal officers who boarded up several rental units without notice or an opportunity to be heard prior to the "taking of property." The summary abatement procedure that the County of Santa Cruz is using is a civil rights violation. The County does not follow state law in declaring a building substandard or prosecuting for a misdemeanor but places a lien on existing buildings without notice and an opportunity to be heard.

The whole Santa Cruz County Code enforcement system is in conflict with state law – Health & Safety Code § § 17920.3, 17922(a)(1), 17980 et seq. and 17995 as applied to existing buildings. The County building code enforcement program is in conflict with the Penal Code, the presumption of innocence, fourth amendment, fifth amendment, and fourteenth amendment. The purpose of the County Code Enforcement system is, with its 10 day time to appeal as opposed to the state 30 day time limit to appeal, is to punish people for their crimes, not to gain compliance with the building and safety regulations.

Conclusion

I believe there is a link between Item #53 (CSA 48 Fire assessment disapproval) and Item #54 (2007 Building Code adoption) on today's agenda which shows that the voters and citizens can express their distrust and anger toward excessive government by voting down taxes. Everyone wants and supports fire services but when the citizens and voters don't trust the government to control its own growth then they simply turn down each and every government request for additional funds. Get used to it !!

This local government, just like Pajaro Valley Water Management Agency (PVWMA), has lost the trust of the people. There are thousands and thousands of illegal red-tags on people's property in this County. The County Code Enforcement has been running wild for at least ten or fifteen years – just like PVWMA. Eventually the people figure out how to express themselves and take back the power over government. In the case of PVWMA that means bankruptcy for the Agency. Do you see any citizens crying about the demise of PVWMA? Over 100 million dollars of illegal taxes collected and

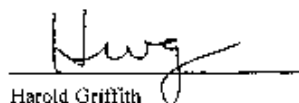
spent by PVWMA and not one drop of water was imported. Do you think people have forgotten the \$100 million dollars the County stole with the illegal utility user tax? Do you think the people have forgotten the \$30 million the City of Watsonville stole its illegal property pension tax? And those were just the taxes that have already been proven in court, an almost impossible task, to be illegal.

How does the County Planning Department look to the people with their illegal red-tags, illegal violation notice recordings, kangaroo court and their illegal fines on existing buildings? How does the County look to developers and owners when it takes years to get their plans approved but the Building Permit Streamlining Act (Government Code § 65920-65963.1) requires much quicker approvals. To a lot of the people the County looks like the evil empire !

According to the Court in *California Apartment Association et al., v. City of Fremont* (2002) 97 Cal. App. 4th 693, the city was entitled to adopt building ordinances outside the 180-day period after which the State Code allows local government to make changes. Therefore, I recommend that this Board take its time in adopting the local rules, if any are necessary, to make sure those revisions are legal this time around.

I propose that the Board of Supervisors reject this local Ordinance in its entirety and let the Health & Safety Code § 17958 automatically adopt the same requirements as those adopted by the State Building Standards Commission. Since the State Building Standards were published July 1, 2007 those state standards would become effective on January 1, 2008 and the County would have no exposure to litigation for adopting local regulations that conflict with state law.

Sincerely,



Harold Griffith

Attachment: 1997 Uniform Housing Code