



August 25, 2008

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

RE : Housing Appeals Board
Permit Application 08-0086
APN 043-105-12
Location: 423 Beach Drive
Owner : SDS Hayward Limited Partnership

Dear Members of the Board,

I received a letter from Chief Deputy County Rahn Garcia (enclosed) today regarding my appeal filed directly to the Board under 17920.6 of the Health and Safety Code.

Unfortunately Mr. Garcia's letter is quite inaccurate:

1. Mr. Garcia states that:

"Your letter does not state the issue or matter you seek to appeal."

Response:

My letter of August 13, 2005 states:

"As agents of the owner I hereby appeal county planning staff determination (see enclosed copy of Mr. Hanna letter of August 1, 2008 and other related documentation) in regards to requirement for a "full engineering geologic report" and soils report for this project."

What can be clearer? With all due respect to Mr. Garcia, his statement is factually inaccurate.

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2. Mr. Garcia continues to go on to only partially quote relevant California Health and Safety Code 17920.6:

"The California Health and Safety Code section that you cite refers to the board or agency responsible for hearing appeals relating to the "use, maintenance, and change of occupancy" of certain structures under the provision of Part 1.5 of Division 13 of the Health and Safety Code (referred to as the "State Housing Law".) Section 17920.6 makes no mention of the Board of Supervisors serving as the appeal body."

Response:

Section 17920.6 states: "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, lodginghouses, 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."

Since there is no Housing Appeals Board in the county of Santa Cruz, one then goes to the Local Appeals Board referenced above.

"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 requirement 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."

Clearly because there is no Housing Appeals Board...and the Local Appeals Board is not formed at the moment...the governing body (in this case the Board of Supervisors) is the board to hear this appeal. Mr. Garcia's comments are misleading, while 17920.6 does not reference the Board of Supervisors, it does reference an Appeal Board, which if it does not exist then the Board of Supervisors shall hear the appeal.

3. Mr. Garcia states the county expressly did not adopt Section 108.8.1 of the 2007 California Building Code.

Response: I agree that the county did not adopt Section 108.8.1, but the county was in error based on state code which states:

Health and Safety Code 17922 (a) second sentence, “The building standards and rules and regulations shall impose substantially the same requirements as are contained in the most recent editions of the uniform industry codes as adopted by the organizations specified...”

I do not believe the building standards and rules and regulations are substantially the same requirements...if, as Mr. Garcia claims, we may not appeal to the Board of Supervisors, then clearly the building standards adopted by the county do not comply with the state Health and Safety Code. As we are all aware the state “trumps” the county in this situation and thus why I refer to state building regulations for this appeal. Mr. Garcia appears to confirm that county code does not follow state code substantially.

4. Mr. Garcia states that only administrative appeals are open to my client:

Response:

As indicated by state code, Mr. Garcia’s statement would be untrue. I have seen that staff regularly intermingle discretionary issues with ministerial issues, or building permit issues with development permit issue, but that does not negate the fact that the technical issues involved in a discretionary permit can be appealed under state code.

5. Mr. Garcia claims that Section 108.8.1 of the 2007 California Building Code does not note the Requirement for the Board of Supervisors to hear an appeal...

Response:

Mr. Garcia’s statement is misleading as Section 108.8.2 does, consistent with state code, require the Board to hear these appeals. If there is no Housing appeals board, then the appeal goes to the Local Appeals Board (“In an area in which there is no such board or agency, “Housing appeals board” means the local appeals board having jurisdiction over the area”), if there is no Local Appeals Board, then “In any area in which there is no such board or agency, “Local appeals board” means the governing body of the city, county or city and county having jurisdiction over the area.”

In addition 108.8.3 states:

“The local appeals board shall hear appeals relating to new building construction and the housing appeals board shall hear appeals relating to existing buildings”.

