

1 Paul M. Carrick
110 Silverline Road
2 Los Gatos, CA 95033

3 SUPERIOR COURT OF THE STATE OF CALIFORNIA IN AND FOR THE COUNTY OF SANTA CRUZ

4
5 COUNTY OF SANTA CRUZ,) Case No.: CIS CV 158731
6 Respondent,)
7 vs.) MEMORANDUM WITH POINTS AND AUTHORITIES
8 PAUL M. CARRICK,) SUPPORTING SUMMARY JUDGMENT
9 Petitioner)

10
11 PAUL M. CARRICK,)
12 Cross-Complainant/Petitioner)

13 v.)
14 COUNTY OF SANTA CRUZ, and ROES I-X)
15 Cross-Defendant/Respondant)

16 -----

17 Dated this July 27, 2009

18 110 Silverline Road
19 Los Gatos, CA 95033

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1 **TABLE OF CONTENTS**

2 Points and Authorities 2

3 Affirmative Defenses 5

4 Causes of Action 11

5 Summary 15

6 Prayer 16

7 Attachment A: The Declaration of Jack Hooper

8 Attachment B: Map, Parcels 106-011-25, 106-011-58, 106-011-60

9 Attachment C: Resignation letter of Michael Bethke

10

11 **POINTS AND AUTHORITIES**

- 12 Santa Cruz County Code Sections 1.12.070(a-n)
- 13 Santa Cruz County Code Sections 12.10.125(a) and (q)
- 14 Santa Cruz County Code Sections 13.10.140(a)
- 15 Santa Cruz County Code Sections 13.10.279(a) and (b)
- 16 Santa Cruz County Code Sections 16.20.210(a)
- 17 Santa Cruz County Code Sections 16.22.160(a)
- 18 Santa Cruz County Code Sections 1.12.050
- 19 Santa Cruz County Code Sections 12.12.010 through 070
- 20 Santa Cruz County Code Sections 12.12.435
- 21 Santa Cruz County Code Section 19.01.080 Record Red-tag
- 22 Santa Cruz County Code Section 19.01.02 Land use enforcement
- 23 Santa Cruz County Code Section 19.01.050 Rescind Red Tag
- 24 Health and Safety Code 17922
- 25 Health and Safety Code 17920.3
- 26 Health and Safety Code 17920.5 out-of-date Appeal Board
- 27 Health and Safety Code 17922 making changes to code
- 28 Health and Safety Code 17930 voids administrative hear
- Health and Safety Code 17932 Appeals to Standards Board

1 Health and Safety Code 17958 et seq
2 Health and Safety Code 17995
3 Health and Safety Code Div. 13, Part 1.5 et seq
4 Health and Safety Code 17910 et seq (State Housing Law)
5 Health and Safety Code 18941.5 (b) revising Building Standards
6 Health and Safety Code 17945 appeal
7 Health and Safety Code 17949.25 et seq mandates certified employees
8 Health and Safety Code 17870 license employees
9 Health and Safety Code 17950 CBC applies to entire state
10 Health and Safety Code 17951 Reasonable fees only
11 Government Code 25845
12 Government Code 27201
13 Government Code 53069.4
14 Government Code 54951
15 Government Code 800
16 Government Code 18909 Only Bldg Stds Committee can modify
17 Government Code 38773.5
18 Government Code 66014-25 fee schedule
19 Civil Code 3479, 3480
20 Code of Civil Procedure 1085
21 Code of Civil Procedure 1094.5
22 Code of Civil Procedure 1087
23 Code of Civil Procedure 1060
24 Code of Civil Procedure 1021.5
25 Code of Civil Procedure 1032
26 Civil Code 3479, 3480
27 Penal Code 802.
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1 California Code of Regulations Title 24 (California Building Code)
2 Constitution of the United States Article 1 Section 9 Clause 3
3 Constitution of California Art 1, Section 19.
4
5 County of Santa Cruz Board of Supervisors Meeting Oct 1, 2002, Consent Agenda #10
6 Ordinance 4682, Amending County Code 12.10
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8
9 Breseno v. City of Santa Ana(1991)6 Cal. App.4th 1378-1382
10 Leslie v. Superior Court (1999) 73 Cal.App.4th 1042.
11 Californians for Natiive Salmon and Steelhead Assoc. v. Dept or
12 Forestry(1990)221Cal.App.3d 1419,1427
13 United States v. Lovett, 328U.S.303,66 S.Ct. 1073 90 L.Ed.1252, 1946
14 Lapeyre v. U.S.,84 U.S.191
15 Hansen Bros. Enterprises v Board of Supervisors, (1996) 12 Cal 4th 533, 540
16 Melton v. City of San Pable (1967) 252 Cal. App 2d 794, 804
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24 Uniform Building Code Handbook
25 California Construction Code Handbook
26 California Building Standards Code
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2 **RESPONSE TO PRAYER FOR RELIEF**

3 Respondent has shown no continuing damage or threat to Public Health, Safety, and
4 Welfare caused by Petitioner, and has hypocritically ignored community damage caused
5 by causing scarce and much needed low-cost housing to be with-held while pretending
6 to support community Health, Safety, and Welfare.

7 **AFFIRMATIVE DEFENSES**

8
9 **FIRST AFFIRMATIVE DEFENSE**

10 (Failure to State Cause of Action or Claim)

11 No injured party or parties are identified nor is means of alleviation of any such
12 unspecified damage by the Petitioner specified.

13 **SECOND AFFIRMATIVE DEFENSE**

14 (Non-Conforming Use)

15 County Code 13.10.260 provides for continuing use of non-conforming structures
16 whenever a code change occurs. A code change restricting trailers occurred about 1970
17 when "trailer-house" already existed, Hansen Bros. Enterprises v. Board of
18 Supervisors, (1996) 12 Cal 4th 533,540. See Attachment A, "Declaration of Jack
19 Hooper."

20
21 **THIRD AFFIRMATIVE DEFENSE**

22 (Contrary to State Law)

23 "A local ordinance may not permit any action or proceeding to abate violations of
24 regulations governing maintenance of existing buildings, unless the building is a
25 substandard building or the violation is a misdemeanor." H&S 17922(g). Respondant
26 caused buildings on APN 106-011-25 and 106-011-58 cease despite no finding of
27 substandard.
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2 **FOURTH AFFIRMATIVE DEFENSE**

3 (Laches)

4 Respondent encouraged habitation of Premises repeatedly and in no way discouraged or
5 forbade their use for almost forty years. Former owner declared that Planning
6 Department said no permit was needed. A well permit, septic tank permit were
7 obtained.

8 **FIFTH AFFIRMATIVE DEFENSE**

9 (Waiver and Estoppel)

10 Respondent withdrew earlier Red-tag in recognition of the legitimacy of the Premises,
11 (Ruth Owens, 1996).

12
13 **SIXTH AFFIRMATIVE DEFENSE**

14 (Statute of Limitations)

15 State Law and County Code affirms continued habitation of Premises already in use
16 except in the case of a Substandard Structure or misdemeanor.

17
18 **SEVENTH AFFIRMATIVE DEFENSE**

19 (Unclean Hands)

20 County Road servicing 106-011-25 and 106-011-58 does not meet County Standards.
21 Respondent has not established neither Housing required by Uniform Housing Code
22 Section 203 nor Building Appeals Board required by California Building Code

23 **EIGHTH AFFIRMATIVE DEFENSE**

24 (Mootness)

25 If there is no remedy to the problem which the copious violations of procedure, (
26 obtaining building permits), which the Respondent claims, the only reasonable
27 conclusion for a working society is that the procedures themselves are moot.
28

1 **NINTH AFFIRMATIVE DEFENSE**

2 (Indispensable Parties)

3 No information about the identities of Roes I-X has been uncovered in two years since
4 the Respondent filed suit. Does the named Defendant bear all the blame for the
5 alleged crimes or do Roes I-X bear responsibility? That the other culpable parties
6 have been suspected to exist and yet not found after so long a time, leaves no other
7 conclusion that there is no crime.

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10 **TENTH AFFIRMATIVE DEFENSE**

11 (Violation of Procedural Due Process)

12 California Building Code includes remedy for structures built without permits. State
13 Law fully occupies this area of enforcement and therefore pre-empts Santa Cruz County
14 code. Authority for handling disputes with enforcement rests with the Board of
15 Appeals.

16 Recording of Building Violations is not one the duties enumerated in State law for the
17 County Recorder. California Attorney General's Opinion No. 80-607 expressed concern
18 that recordation of alleged violations of property was effective means of enforcement
19 via economic black-mail and discouraged such use. County Codes 19.01.030, 19.01.070,
20 and 19.01.080 falsely authorize Respondent to record such alleged violations.
21 Government Code 27201 does not permit NOV to be recorded against property.

22 **ELEVENTH AFFIRMATIVE DEFENSE**

23 (Violation of Substantive Due Process)

24 Article 1 Section 9 Clause 3 of the Constitution of the United States prohibits Bills
25 of Attainder, ie. anonymous actions by government or actions not supported by
26 affirmation under oath, The Red-tags issued against the Respondent in April 13, 2006
27 and September 20, 2006, are therefore illegal.
28

1 United States Constitution 5th Amendment provides "no person..shall be deprived of
2 life, liberty, or property without due process;" and 14th Amendment, "nor shall any
3 state deprive any person of life, liberty, or property without due process of law."
4 Using County Recorder for public viewing to record unsubstantiated conclusions at law
5 diminishes or even eliminates the Petitioner's ownership of his real properties 106-
6 011-25 and 106-011-58.. Article 1, section 19 of the California Constitution
7 provides for just compensation for damaging private property.

8 **TWELFTH AFFIRMATIVE DEFENSE**

9 (Injunctive Relief Unavailable)

10 No on-going violation of County Codes by Petitioner which would merit Injunctive
11 Relief has been shown to exist.

13 **THIRTEENTH AFFIRMATIVE DEFENSE**

14 (Monetary Penalties Preempted)

15 Monetary Penalties do not comply with and contrary to California Law including but
16 not limited to section 25132 and 53069.4 of the Government Code and Section 17995 of
17 the Health and Safety Code. Government Code 38773, et seq., and Health and Safety
18 Code 17995,et seq. have also been violated.

19 Unified Fee Schedule in California Building Code exceeded, (Government Code 66016)

21 **FOURTEENTH AFFIRMATIVE DEFENSE**

22 (Preemption)

23 Relief requested by the Respondent do not comply and is contrary to California law
24 but not limited to section 3479 of the Civil Code (Nuisance) and Health and Safety
25 Code Title 24, Part 2.
26
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1 **FIFTEENTH AFFIRMATIVE DEFENSE**

2 (Failure to Mitigate)

3 Respondent could have mitigated any damages conceived attributable the Petitioner
4 whether real or not.
5

6 **SIXTEENTH AFFIRMATIVE DEFENSE**

7 (Due Process Violations)

8 The Respondent's Complaint is barred because of violations of United States and
9 California State Constitutions. The Respondent's Grading ordinance is vague and
10 overbroad.
11

12 **SEVENTH AFFIRMATIVE DEFENSE**

13 (Failure to Exhaust Administrative Remedies)

14 The Complaint is barred because the Respondent has not exhausted Administrative
15 Remedies, including those belonging to Health and Human Services Department.
16

17 **EIGHTTEENTH AFFIRMATIVE DEFENSE**

18 (Ripeness)

19 The Complaints are not ripe for adjudication.
20

21 **NINETEENTH AFFIRMATIVE DEFENSE**

22 (Uncertain Pleadings)

23 The Complaint is barred because it is uncertain, ambiguous, unintelligible, and
24 improperly dependent other documents.
25

26 **TWENTIETH AFFIRMATIVE DEFENSE**

27 (lack of Irreparable Injury)

28 Injunctive relief requested by Respondent is inappropriate because Respondent has not
suffered irreparable injury.

1 **TWENTY-FIRST AFFIRMATIVE DEFENSE**

2 (Attorneys Fees Not Authorized)

3
4 The Respondent's claim for attorney fees is not authorized by statute and conflicts
5 with Government Code 38773.5 and 66014-66025.
6

7 **TWENTY-SECOND AFFIRMATIVE DEFENSE**

8 (Reservation of Defenses)

9 Unanticipated defenses by the Petitioner are not barred.
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2 **CAUSES OF ACTION**

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4 **FIRST CAUSE OF ACTION**

5 (Petition for Writ of Mandate)

6 (failure to Proceed in the Manner Required by Law/Due Process Violations)

7 Santa Cruz County Code 12.10 follow neither the provisions in California
8 Building Code 108.8 nor in Uniform Housing Code Section 203.

9 Section 108.8.e of Title 24 of the California Building Code, 2007 states, "except as
10 otherwise provided in law, any person, firm or corporation adversely affected by a
11 decision, order or determination by a city, county or city and county relating to
12 the application of building standards published in the California Building
13 Standards Code, or any other applicable rule or regulation adopted by the Department
14 of Housing and Community Development, or any lawfully enacted ordinance by a city,
15 county or city and county, may appeal the issue for resolution to the local appeals
16 board or housing appeals board as appropriate." Respondents effectively suppressed
17 the Appeals Board from 1978 to December 2008. An Administrative Review Meeting called
18 a "Protest Meeting" was substituted for the Appeals Board. When the re-instated
19 Appeals Board repudiated the Respondent's obfuscation of the California Building Code,
20 the Board of Supervisors disbanded it, substituting themselves despite that not one of
21 them was qualified for the job. See Resignation Letter of Michael Bethke,
22 Attachment C. Lack of Appeal Board caused Petitioner hardship: Health & Safety
23 17594. Appeal Board can delay abatement if necessary due to hardship. In May 28,
24 2008, Summit burned out entire area around Premises. County Code 12.070(D) procedures
25 not followed.

26 Notice of Violation issued by the Respondent is not the same as Notice and Order
27 pursuant to Uniform Housing Code 1101. Recordation of a Notice of Violation by
28 Respondent is not done in compliance with Uniform Housing Code 1102. Protest Meeting

1 does not fit the requirements of H&S 17920 and 17920.3 for a Housing Appeal Board.
2 Penalties for Housing Code violations are limited by H&S 17995.

3 **SECOND CAUSE OF ACTION**

4 (Petition for Writ of Mandate)

5 (Non-Conforming Use)

6 Structures on Petitioners Parcel 106-011-25 and 106-011-58 were swept into "Legal,
7 Non-Conforming" status by a change in County Codes in 1970, Hansen Brothers
8 Enterprises vs Board of Supervisors, (1996)12 Cal 4th 533,540.

9 Chapter 34 of California Building Code, Section 3401, concurs: Buildings in existence
10 at the time of the adoption of this code may have their existing use or occupancy
11 continued, if such use or occupancy was legal at the time of the adoption of this
12 code, provided such continued use is not dangerous to life. Any change in the use
13 or occupancy of any existing building or structure shall comply with the provisions of
14 section 109 (certificate of occupancy) and 3405(change in use) of this code."

15 California Building Code Title 24, section 3402 reads likewise.

16 H&S 19959 addresses enforcing standards on structures build prior to July 1, 1970.

17 No interpretation laid upon either 2001 California Building Code or that for 2007 can
18 require that building permits be retroactively required.

19 Santa Cruz County purports to remedy lack of permits: "submit plans to legalize
20 habitable and non-habitable structures on parcel(s), (April 13, 2006 Notice of
21 Violation). No such requirement exists for any of the four state laws cited above.
22 State law pre-empts local law.

23 Moreover, local code sections contained in the April 13 Notice of Violation and in the
24 September 20 Notice of Violation differ from California Building Code. Per H&S
25 17958.7, these differences must be recorded with the Building Standards Commission.
26 No recordation has been proven by the Respondent. The sections of code written in
27 the Notices of Violation are void.
28

1 **THIRD CAUSE OF ACTION**

2 (Petition for Writ of Mandate)

3 (State Law Preempts the County's As-Built Policy and Procedures)

4 Article IV Section 16(b) of California State Constitution states "A local or special
5 statute is invalid in any case if a general statute can be made applicable."

6 Existing structures fall under the purview of Health & Safety 17920.3 in the event
7 they are suspected of being "substandard." In Santa Cruz County, the Environment
8 Health or Public Health Departments take care of threats to public safety. Leslie v.
9 Superior Court(1999) 73 Cal.App.4th 1042 has upheld State Code over local Codes. For
10 the Respondent's 'as-built' to have taken effect at time of the Red-tags issued, they
11 would have to be registered with the Building Standards Commission. No record of
12 registration could be found, however. The Codes appearing on the Red-tags were
13 therefore invalid.

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16 **FOURTH CAUSE OF ACTION**

17 (Petition for Writ of Mandate and Declaratory Relief)

18 (Nuisance)

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20 Contrary to Santa Cruz Code 13.10.279(a-b), not having building permits doesn't make
21 houses nuisances. The structures Red-tagged, (see map in Attachment B), are not
22 nuisances but god-sends to people in need. The Petitioner has rescued families out
23 of living in cars, tents, and in factory space not meant to be inhabited. The
24 structures provided reliable refuge with full electric, water, and plumbing service
25 even in disasters such as the 1989 Loma Prieta Earthquake, the 2008 Summit fire, and
26 annual winter storms (although in the later two cases, the Respondent's actions
27 prevented anyone from benefiting from that refuge).

1 **SEVENTH CAUSE OF ACTION**

2 (Declaratory Relief)

3 (Code Civil Procedure 1060)

4 Article I, Section 19 of the California Constitution provides for just compensation
5 for damaging private property. The Respondent's actions have prevented families from
6 enjoying the low-cost and safe environment provided by Petitioner on his property for
7 decades. A neighborhood child continually asks him, 'when will children move back
8 into your house so I can have someone to play with?' The Respondent has used its
9 Police Power indiscriminately and unwisely in such a way as to diminish the Health
10 and Safety and morals of the community by preventing use of the Petitioner's available
11 dwelling places. The Petitioner seeks Judicial Determination under Civil Code of
12 Procedure 1060 about whether the bureaucratic needs of the Respondent, the Santa Cruz
13 County Planning Department, or the Petitioner and the many families he has housed are
14 more important.

15 Government Code 66014-66025 require Respondents to limit fees charged to the
16 "estimated reasonable cost of providing the service for which te fee is charged."
17 Respondents have abused this guideline charging over 27 hours of time for legal work
18 which already been paid for and done by the Petitioner.

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SUMMARY

It is the observation of the Petitioner over several public meetings with the Santa Cruz Board of Supervisors the Appeals Board during its brief tenure from December, 2008, to June 2 of 2009, that lack of administrative guidance has given to capriciousness, factions, and irresponsibility by some persons in County Government. They attempt to hide their problems behind twisting State required functions of county government into political factions rather than agencies to serve the public. Training required by employees occupying state-designated roles in county government is mandated by Health & Safety Code 18949.25-31 and 19870 must be enforced by management. See "Resignation Letter by Michael Bethke, Attachment C.

The Respondent proceeded without due care, in excess of its authority, and showed prejudicial abuse of discretion in findings are not supported by facts. It is hoped statement of facts will right that.

1
2 **PRAYER**

3 Cross-Complainant/Petitioner prays for Summary Judgment as follows:

- 4 1. That the Court deny Respondent's request for a Permanent Injunction;
- 5 2. That the Complaint be dismissed in its entirety with prejudice;
- 6 3. That Respondent take nothing by of its Complaint, including Respondent's request
7 for code compliance enforcement costs, alleged illegal rents and attorneys fees, and
8 that judgment be entered in favor of Petitioner;
- 9 4. For alternative and preemptory writs of mandate directing the County of Santa
10 Cruz to comply with the requirements of the State Housing Law and Title 24 of the
11 California Code of Regulations;
- 12 5. For alternative and peremptory writs of mandate directing Respondent, the
13 Planning Department of the County of Santa Cruz, to rescind the Notice of Violation
14 recorded on APN 106-011-25 and 106-011-58 through issuance and recordation of a Notice
15 of Expungement;
- 16 6. For an award of attorneys' fees against Respondent as permitted or required by
17 law;
- 18 7. For costs of suit herein; and
- 19 8. For any other and further relief as this Court deems just and proper.
- 20
21

22 **DATED:**

23 July 27, 2009

24
25
26 **BY:** _____

27 Paul M. Carrick