

## **Santa Cruz County Supervisors Continue to Violate Laws To Provide for Building and Housing Board of Appeals. Supervisors cannot be the appeals board themselves.**

August 15, 2009 - The following is from *63 Ops. California Attorney General 554 1980* opinion citing precedent cases to uphold due process safeguards for citizens from Planning Dept. abuses.

Argues that effective in 1961, Health & Safety 17922(a) is not an unconstitutional delegation authority to a non-governmental body despite Article IV Sect 1, Article II Sect 12 and Article III Sect 3 of the California Constitution.

*Kugler v. Yocum*, supra 69 Cal 2d p375 and *Dougherty v. Austin* (1892)94 Cal 601, 606-607 also were against delegation of Legislative power.

### **Oregon Supreme Court Case of *Warren v. Marion County*, supra, 222 opinion,**

‘ . . . 2) Any governing body of a county which adopts ordinances establishing building codes shall by ordinance provide procedure for appeals from decision made under the authority of the ordinances establishing building codes.’ In rejecting this challenge, the Oregon Supreme Court stated: ‘It is now apparent that the requirement of expressed standards has, in most instances, been little more than a judicial fetish for legislative language, the recitation of which provides no additional safeguards to persons affected by the exercise of the delegated authority . . . [T]he important consideration is not whether the statute delegating the power expresses standards, but whether the procedure established for the exercise of the power furnishes adequate safeguards to those who are affected by the administrative action.’ (222 Ore. at page 314.)

The Attorney General’s defense of H&S 17922(a) authorizing use of the Uniform Housing Code of International Conference of Building Officials and other similar private organization depends on the existence of a valid duly appointed, independent County Appeal Board which assures due process of law recognizable in the Judiciary system—**something which Santa Cruz County has never had as a part of its government.**

### **See Government Code 1099 and 815.6 and California Building Standards Code B101-B101.4.2 below.**

**1099.** (a) A public officer, including, but not limited to, an appointed or elected member of a governmental board, commission, committee, or other body, shall not simultaneously hold two public offices that are incompatible. Offices are incompatible when any of the following circumstances are present, unless simultaneous holding of the particular offices is compelled or expressly authorized by law:

(1) Either of the offices may audit, overrule, remove members of, dismiss employees of, or exercise supervisory powers over the other office or body.

(2) Based on the powers and jurisdiction of the offices, there is a possibility of a significant clash of duties or loyalties between the offices.

(3) Public policy considerations make it improper for one person to hold both offices.

(b) When two public offices are incompatible, a public officer shall be deemed to have forfeited the first office upon acceding to the second. This provision is enforceable pursuant to Section 803 of the Code of Civil Procedure.

(c) This section does not apply to a position of employment, including a civil service position.

(d) This section shall not apply to a governmental body that has only advisory powers.

(e) For purposes of paragraph (1) of subdivision (a), a member of a multimember body holds an office that may audit, overrule, remove members of, dismiss employees of, or exercise supervisory powers over another office when the body has any of these powers over the other office or over a multimember body that includes that other office.

(f) This section codifies the common law rule prohibiting an individual from holding incompatible public offices.

**1021.** A person is disqualified from holding any office upon conviction of designated crimes as specified in the Constitution and laws of the State.

**815.6.** Where a public entity is under a mandatory duty imposed by an enactment that is designed to protect against the risk of a particular kind of injury, the public entity is liable for an injury of that kind proximately caused by its failure to discharge the duty unless the public entity establishes that it exercised reasonable diligence to discharge the duty.

### *History:*

The following does not allow the Santa Cruz County Board of Supervisors to be the Appeals Board or be appealed to after any appeals board decision. Appeals boards are supposed to be independent of government and appeals board decisions are final. Ellen Pirie, Neil Coonerty, Tony Campos, Mark Stone, John Leopold and former supervisor, Jan Beautz have denied such appeals boards and due process since they occupied their positions through 2008 and since the 1960's when H & S Code 17920 et seq and 17922 et seq became law.

In 2009 the Supervisors, led by Ellen Pirie and Neil Coonerty, disbanded the new appeals board, after only a few months of its existence, while they were setting up their procedures according to law. **Considerable illegal interference by the County at the three appeals board meetings took place to orchestrate their premeditated disbandment of the appeals board.** Pirie and Coonerty and the other Supervisors, along with Planning Dept. Director, Tom Burns and Assistant Directors, David Lee and Mark Deming, were so threatened by a lawfully functioning appeals board that would follow the State building codes and Constitutions. Such State codes supersede county restrictions. It was these county restrictions which obstructed State and Federal statutes, laws and codes which benefit the citizens v. the continuing extortion, fraud, malicious, arbitrary and capricious treatment that is the common practice and culture of the Planning Dept, headed by Director, Tom Burns. Reelecting Supervisor incumbents, Campos and Coonerty, would be a travesty.

## CALIFORNIA

- CALIFORNIA
- [\[ 2007 California Building Code, Title 24, Part 2 \(First Printing\), includes Supplements through Jan 09 \]](#)
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### **SECTION B101 GENERAL**

#### **B101.1 Application.**

The application for appeal shall be filed on a form obtained from the building official within 20 days after the notice was served.

#### **B101.2 Membership of board.**

The board of appeals shall consist of persons appointed by the chief appointing authority as follows:

1. One for five years; one for four years; one for three years; one for two years; and one for one year.
2. Thereafter, each new member shall serve for five years or until a successor has been appointed.

The building official shall be an ex officio member of said board but shall have no vote on any matter before the board.

#### **B101.2.1 Alternate members.**

The chief appointing authority shall appoint two alternate members who shall be called by the board chairperson to hear appeals during the absence or disqualification of a member. Alternate members shall possess the qualifications required for board membership and shall be appointed for five years, or until a successor has been appointed.

#### **B101.2.2 Qualifications.**

The board of appeals shall consist of five individuals, one from each of the following professions or disciplines:

1. Registered design professional with architectural experience or a builder or superintendent of building construction with at least ten years' experience, five of which shall have been in responsible charge of work.
2. Registered design professional with structural engineering experience
3. Registered design professional with mechanical and plumbing engineering experience or a mechanical contractor with at least ten years' experience, five of which shall have been in responsible charge of work.
4. Registered design professional with electrical engineering experience or an electrical contractor with at least ten years' experience, five of which shall have been in responsible charge of work.
5. Registered design professional with fire protection engineering experience or a fire protection contractor with at least ten years' experience, five of which shall have been in responsible charge of work.

#### **B101.2.3 Rules and procedures.**

The board is authorized to establish policies and procedures necessary to carry out its duties.

#### **B101.2.4 Chairperson.**

The board shall annually select one of its members to serve as chairperson.

#### **B101.2.5 Disqualification of member.**

A member shall not hear an appeal in which that member has a personal, professional or financial interest.

#### **B101.2.6 Secretary.**

The chief administrative officer shall designate a qualified clerk to serve as secretary to the board. The secretary shall file a detailed record of all proceedings in the office of the chief administrative officer.

#### **B101.2.7 Compensation of members.**

Compensation of members shall be determined by law.

**B101.3 Notice of meeting.**

The board shall meet upon notice from the chairperson, within 10 days of the filing of an appeal or at stated periodic meetings.

**B101.3.1 Open hearing.**

All hearings before the board shall be open to the public. The appellant, the appellant's representative, the building official and any person whose interests are affected shall be given an opportunity to be heard.

**B101.3.2 Procedure.**

The board shall adopt and make available to the public through the secretary procedures under which a hearing will be conducted. The procedures shall not require compliance with strict rules of evidence, but shall mandate that only relevant information be received.

**B101.3.3 Postponed hearing.**

When five members are not present to hear an appeal, either the appellant or the appellant's representative shall have the right to request a postponement of the hearing.

**B101.4 Board decision.**

The board shall modify or reverse the decision of the building official by a concurring vote of two-thirds of its members.

**B101.4.1 Resolution.**

The decision of the board shall be by resolution. Certified copies shall be furnished to the appellant and to the building official.

**B101.4.2 Administration.**

The building official shall take immediate action in accordance with the decision of the board.