

THE BUILDING AND FIRE CODE BOARD OF APPEALS  
COMMISSION RESPONSE TO TOM BURNS CONTINUED  
IGNORANCE OF HIGHER LAWS AND RIGHTS OF CITIZENS.

May 8, 2009

Appeals Board Members,

We received information at our Regular meeting of 3/16/09 that indicates that a basis for an appeal exists (soils & geotechnical report requirements among others) and that a fee for an appeal has been paid related to the project at 423 Beach Drive, Aptos and that the Planning staff has prevented the bringing of an appeal to our Board.

We have already waited over 30 days and have received no notice of, nor seen any action on the part of, the Planning Department indicating that a hearing is being scheduled or is planned. The Appeals Board has received no letter or message from staff regarding why they feel that these matters may not be within our jurisdiction.

In my opinion the Assistant Planning Director and the Deputy County Counsel have made unmistakable and multiple erroneous statements in the material we have been supplied with to date. This indicates they are either not informed properly of our Board's authority and jurisdiction under state laws and regulations or they are attempting to block valid appeals.

The bottom line is that right now the Planning Director is obstructing the proper and lawful duty of this Board to hear appeals. Without any presumption as to motive this appears to amount to either a **prejudicial abuse of discretion by the Planning Director** or it could amount to a **fraudulent act**. In either case this places the **County in jeopardy and liable to legal action by any Appellant** that is now being or in the past was improperly denied an appeal before this Appeals Board.

I ask that the rest of the Board members consider our duty and authority under state law. There are at least several county code sections that are invalid on their face because they are in conflict with state law. This calls into question whether the senior Planning staff and/or the County Counsels Office are acting with prejudice or with malicious intent and abusing their authority.

While we may not yet have had a chance to fully review our situation in detail a brief examination of the full scope of our vested authority under state law and state regulations having the force of law reveals our duty and our scope of jurisdiction. I ask that the rest of the Board members consider that we are required by law to act reasonably and use our authority as provided by law to act in the general public interest to hear and decide appeals while always keeping in mind the public health and safety.

The Board of Supervisors recognized that our Board was needed and affirmatively took many careful and deliberate steps to ensure we were properly qualified and appointed. I

believe this makes their intent to support the operation of this Board clear and their desire to see us act for the public interest unmistakable. Simply put we must now act in the Public Interest.

I hereby ask that the Chair immediately call a Special meeting for Wednesday, May 13th at 7pm at the Board of Supervisors Chambers and instruct staff to issue a Public Notice and Agenda on Friday for consideration of the Petitions for Appeal of Mattson-Britton Architects for the Applicant - Mulcahy / SDS Hayward LLP for the Project located at 423 Beach Drive , Aptos and that this Appeal be the only item of business.

If the Secretary of the Board fails to act in accordance with this request then the Chair should mail out the Public Notice / Agenda not later than Saturday, May 9th 2009.

Sincerely,

Daniel Bronson

Vice-Chair

On Thu, 5/7/09, Tom Burns <PLN001@co.santa-cruz.ca.us> wrote:  
From: Tom Burns <PLN001@co.santa-cruz.ca.us> Subject: RE: Special Meeting /  
Distributed IAW Brown Act / Public Record To: danbronson@sbcglobal.net, "Michael  
Bethke" <michael@slattcon.com>, "Michael Bethke" <planningdude@cruzio.com>,  
"Richard Irish" <richard@riengineering.com>, "Martha Fiorovich"  
<marty@fiorovichgroup.com>, "David Parks" <parks.cal80@gmail.com> Cc: "David  
Lee" <PLN002@co.santa-cruz.ca.us>, "Mark Deming" <PLN023@co.santa-cruz.ca.us>,  
"Rahn Garcia" <csl021@co.santa-cruz.ca.us>  
Date: Thursday, May 7, 2009, 6:07 PM

Dear Appeal Board Members:

In light of the recent emails, I need to reply to all of you. Please consider these comments in the context that they are being offered -- trying to be helpful to avoid confusion for appellants and trying to not put your Board into an awkward position with regard to compliance with County ordinances.

As we have discussed in prior Appeal Board meetings, neither appellants, individual Board members, nor the Appeals Board as a whole are in a position to declare whether an appeal is appropriate to go to your Board. The powers and duties of the Building, Accessibility and Fire Code Board of Appeals are set forth clearly in the County Code- copies of the applicable sections have been provided to each of you. In addition, the Board of Supervisors, which sets the ordinances and regulations under which the Building, Accessibility and Fire Code Board of Appeals operates, explicitly established a process for the Planning Department to direct appeals to the proper appeals body. When an appeal is submitted that is within your jurisdiction, the County Code requires staff to schedule the matter for your consideration within 30 days of the filing of the appeal. When this occurs, we will contact you to set a meeting date within this thirty day window. Further, the County Code specifically requires a minimum of 10 day written notice to the appellant in advance of the hearing date. These timeframes, which are statutory requirements, provide the necessary time to set the meeting, provide notice to the appellant, give staff time to prepare a staff report that analyzes the issues of the appeal, distribute the materials to your Board in advance of the meeting, and meet the Brown Act noticing requirements.

The procedures for handling appeals was an item on your last agenda, and it has been continued to your next agenda. Included in those procedures is an explanation of our role as the "gatekeeper" of appeals as directed by the County Board of Supervisors. In this regard, we check to make sure that appeals are timely, that the appeal fee has been paid, and that the appeal is within the jurisdiction of the Building, Accessibility and Fire Code Board of Appeals. If your Board disagrees with the Board of Supervisor's decision to have us perform this role, as part of your action on this agenda item, your Board could take an action to recommend reconsideration of this decision by the Board of Supervisors. Staff would forward your recommendation to the Board of Supervisors, along with staff's analysis of the issues. Similarly, if your Board disagrees with existing language in the County Code or past actions of the County Board of Supervisors with regard to adoption of the 2007 CBC, one of you could request the Chair to place an item on a future agenda and again, we would take your recommendations of possible ordinance changes to the County Board of Supervisors for their consideration. Please be reminded that your Board is a decision-making body with regard to appeals within your jurisdiction, and an advisory body with regard to policy. **Accordingly, unless and until the County Board of Supervisors changes it's adopted ordinances and/or policies, we are both bound to follow them.**

You will recall that we discussed at your last meeting that we will share with you a log required by the Board of Supervisors of appeals related to building issues and where they have been directed. Any appeals that we determine are not within the jurisdiction of the Building, Accessibility and Fire Code Board of Appeals would be included in that log and be part of the public record.

In the meantime, we have recently received two appeals. One is of County Fire's requirements related to fire access to a home in Sunset Beach. Based on our review, that appeal should be heard by your Board. We are currently exploring dates for that meeting with County Fire and will be in contact with you to set a special meeting to consider that appeal. The second appeal, filed by Mr. Britton for a house under construction on Beach Drive, has been evaluated and found to not be an appropriate appeal to your body. In fact, his appeal is to a stop work notice (a red tag), clearly out of the purview of your Board. As such, we

will direct his appeal to the proper path.

In the future, if any of you are contacted directly by applicants or homeowners asking for you to consider their appeal, please direct them to the Planning Department front counter to file their appeal. In spite of correspondence from appellants or others, reacting directly to requests will only cause more confusion. Please feel free to contact me if you have any concerns about these topics. And, of course, the Board will be able to discuss this topic more formally as part of the ongoing agenda item regarding the appeals process.

*Tom Burns* Planning Director County of Santa Cruz

**From:** dan bronson [mailto:danbronson@sbcglobal.net]

**Sent:** Wednesday, May 06, 2009 4:49 PM

**To:** Cove Britton

**Cc:** Tom Burns; Michael Bethke; Michael Bethke; Richard Irish; Martha Fiorovich; David Parks

**Subject:** Re: Special Meeting / Distributed IAW Brwon Act / Public Record

From Dan Bronson,

There is no Brown Act restriction on discussions of dates and times for meetings.

The 24 hour Public Notice for Meetings is for emergencies and special media notice is required. I suggest we hold a Special meeting with the normal 72 hours Public Notice for this and all future Appeals Hearings (as I stated in our 3/16/09 Regular Meeting).

*In this way we can stay out of any problems with Brown Act compliance.*

Mr. Britton has good cause for complaint since we have not taken up his appeal in a timely fashion. And there are 2 others that he submitted at that same time on 3/16/09 that we must quickly consider also at subsequent Special Meetings / Appeals Hearings. He is first in line so I suggest we should consider his first appeal not later than next week.

I am easily available any day except Tuesday. I suggest we have the Appeal Mr. Britton has indicated he wishes heard first as the ONLY ITEM OF BUSINESS on the Agenda and that this Appeal Hearing Special Meeting Public Notice be made not later than this Friday.

If it is the Boards pleasure to have the Hearing on Tuesday evening I shall show up.

Sincerely,

Dan Bronson  
Member,  
Appeals Baord

On **Wed, 5/6/09, Cove Britton** <cove@matsonbritton.com> wrote:

From: Cove Britton <cove@matsonbritton.com>

Subject: Special Meeting

To: "Richard Irish" <richard@riengineering.com>, "Michael Bethke" <michael@slattcon.com>, danbronson@sbcglobal.net, "Martha Fiorovich" <marty@fiorovichgroup.com>, "David Parks" <parks.cal.80@gmail.com>

Cc: "Tom Burns" <PLN001@co.santa-cruz.ca.us>

Date: Wednesday, May 6, 2009, 10:35 PM

RE: APN O43-105-12 423 Beach Drive

Dear Members of the Local Appeals Board:

I am requesting a Special Meeting to be called in reference to appeal for the property noted above. Based on the Brown Act it is my understanding that 24 hour notice is sufficient.

## 2. Special Meetings

Under the Act, the presiding officer or a majority of the body may call a special meeting. So long as substantive consideration of agenda items does not occur, a majority may meet without providing notice to the public in order to call the meeting and prepare the agenda. (*216 Sutter Bay Associates v. County of Sutter* (1997) 58 Cal.App.4th 860, 881-882.)

Notice of a special meeting must be provided 24 hours in advance of the meeting to all of the legislative body members and to all media outlets who have requested notification. (§ 54956; 53 Ops.Cal.Atty.Gen. 245, 246 (1970).) The notice also must be posted at least 24 hours prior to the meeting in a location freely accessible to the public. The notice should indicate that the meeting is being called as a special meeting, and shall state the time, place, and business to be transacted at the meeting. No other business shall be considered at the special meeting. Notice is required even if the meeting is conducted in closed session, and, even if no action is taken.

A member of the local body may waive failure to receive notice of the meeting by filing a written waiver prior to the meeting or by being present at the meeting.

At every special meeting, the legislative body shall provide the public with an opportunity to address the body on any item described in the notice before or during consideration of that item. (§ 54954.3(a).) The special meeting notice shall describe the public's rights to so comment. (§ 54954.3(a).)

As noted in my appeal, due to the stop work notice, a number of individuals have not been able to go to work and this has created a hardship situation. I would request/suggest that addressing the "stop work" notice as soon as possible would be appropriate, while the other issues could be addressed at a later time if necessary.

Thank you for the Boards' consideration.

Sincerely, Cove Britton, Architect

