

Obstacles to the Orderly Operation of the Santa Cruz County Planning Department

Background

The Grand Jury received a complaint alleging that for a period of ten years, county officials have failed to act and have obstructed the enforcement of county use permits and other code violations by a local winery. In the process of investigating this complaint, the Grand Jury determined that not only has one member of the County Board of Supervisors interfered in the normal handling of these code violations, but it is actually a regular practice for supervisors to become involved in the day to day operations of the Planning Department.

Scope

This report was started as an investigation into the complaints by the neighbors of a winery. To research these complaints, the Grand Jury studied a wide variety of information about the situation.

- reviewed the complaint
- interviewed the complainants
- studied the Santa Cruz County permit and code enforcement process
- visited the winery site and surrounding neighborhood
- researched available history of the winery
- interviewed County officials and staff
- interviewed the winery owner
- examined a wide variety of additional documents including photographs from the complainants and countless emails and memos between the Planning Department, the County Board of Supervisors, the Supervisors' staff, the winery owners and agents acting in the winery's behalf.

Findings

1. The members of the Santa Cruz County Board of Supervisors make it a widespread practice to provide direct input into the day-to-day operations of the Planning Department. Communications from Supervisors to all planning levels ranged from phone calls and e-mail to personal meetings and detailed memos. During the time period investigated, there were thousands of emails and memos between the Supervisors and the Planning Department staff. Some of the memos simply stated that the Supervisor had no specific input for a particular permit. One Supervisor has a scheduled bi-weekly meeting with the Planning Department. The amount of intervention in the planning process varied by supervisor.

Response: Santa Cruz County Board of Supervisors

The County concurs that many contacts occur between individual Board members, their staff, and Planning Department staff but cannot confirm the number of emails and memos between the Supervisors and Planning Department staff without knowing the specific time period referenced by the Grand Jury in which it conducted its inquiry. Also, it is not clear what is meant by the term "intervention." It is true that the amount of contact with staff varies among Supervisors. However, contact does not necessarily indicate intervention. Frequently, Supervisors' communications are focused on inquiries regarding the status of an application or issue. Often the communications consist of no more than a request that staff respond to constituent inquiries or questions. Sometimes Supervisor contacts consist of efforts to facilitate meetings between constituents and staff from several County departments, including Planning.

Also, and perhaps most importantly, communications address issues concerning neighborhood responses to development proposals, and correctly so. The Supervisors, as the elected representatives of the area, are uniquely well positioned to assess and communicate neighborhood concerns.

2. The planning staff testified that they are under pressure to comply with the directives given them by the members of the Board of Supervisors. The planning staff does not like the interference because it disrupts the orderly completion of their tasks. The Grand Jury review of the relevant emails and memos also found that the tone of many of these were condescending and abusive.

Response: Santa Cruz County Board of Supervisors

Planning staff's role in the county's land use policy and development review process is to expedite and facilitate informed decision-making. The process is structured to maximize the opportunity for input by various interested parties, including individual Board members who choose to provide comments regarding specific permit applications. Decision-makers, including the Zoning Administrator, the Planning Commission, and the Board of Supervisors as a whole, are not bound in their decision-making by the staff's recommendations or by the comments by interested persons, including individual Board members. Although individual staff members may at times be uncomfortable with an individual Supervisor's method of advocacy, the roles should be clearly understood by staff. The planning process is advanced by the input of interested and concerned citizens and elected officials. These topics are often the subject of staff training.

3. San Diego County has an ordinance prohibiting the members of the Board of Supervisors from communicating with planning department staff regarding public hearings on permit applications, except within the context of public hearings themselves. See the appendix for details.

Response: Santa Cruz County Board of Supervisors AGREES

4. Some red tag¹ violations are more important than others. They can reflect health and safety issues as well as the more mundane issues such as fence heights, shed placement and even designs. There is a backlog of approximately 3,000 red tags, some of which go back many years.

Response: Santa Cruz County Board of Supervisors PARTIALLY AGREES

At the time that the Grand Jury conducted its inquiry, the backlog of Code Compliance cases may indeed have approximated 3,000. However, as reported to the Board of Supervisors on June 3, 2003, the number of unresolved code compliance cases has been reduced to 2,127. Also, as reported in the June report, staff continues to identify and implement alternatives for achieving further reduction and ultimate elimination of the backlog case inventory.

5. The Santa Cruz County Planning Department requires that all red tag and use permit violations for a given property be resolved at the same time.

Response: Santa Cruz County Board of Supervisors AGREES

The County agrees with this finding with the following clarification.

Santa Cruz County Code Section 12.01.070 C requires that all code compliance violations be resolved before issuance of a building permit.

6. The winery in question is operating under a use permit issued in 1976. All agree that the permit was loosely and poorly worded. The winery and the county disagree as to whether or not current operations violate the 1976 use permit.

Response: Santa Cruz County Board of Supervisors AGREES

7. The initial complaints against the winery began in 1993 and the first code compliance red tag was issued in 1997. The winery has applied for permits to resolve some of the building permit related red tags. However, the Planning Department will not resolve the building violations until they can reach a new agreement on the scope of the current and still valid use permit.

Response: Santa Cruz County Board of Supervisors PARTIALLY AGREES

A number of complaints have been filed on this property with the Planning Department's Code Compliance section alleging violations of Use Permit conditions and other violations of the County Code. Code Compliance staff investigated the complaints and determined both that violations, in fact, exist and that clarification of the 1976 permit's conditions of approval is needed concerning activities having significant implications relative to adverse impact on adjacent residential land uses. Pursuant to the authority set forth in County Code Section 18.10.136, the Planning Department prepared a report to the County Planning Commission that discussed the issues of non-compliance and recommended that the Planning Commission initiate the process to amend the Use Permit for the winery to address those issues. After consideration of the staff report, and

¹ A "red tag" is an official notice of violation of a building code. If not attended to, it is filed at the County Recorder's Office and thereby blocks new title insurance policies. This prevents the refinancing or sale of a property.

following testimony by the neighbors and winery representatives, on July 23, 2003, the Planning Commission continued consideration of the review of the use permit until September 24th to allow the property owner an opportunity to file an application to amend their permit to address the range of issues that have been raised.

8. A Supervisor directly interfered in the normal handling of the code violation complaint against this winery. It was done in a sincere attempt to mediate between factions having trouble finding a middle ground, but in the process the ordinary procedure of code compliance hearings was subverted *three* times.

Response: Santa Cruz County Board of Supervisors DISAGREES

The ordinary procedure of code compliance hearings was not subverted. The Planning Department believes that the permit was validly issued, but concedes that it could have been written more clearly. The lack of clarity has probably contributed substantially to the current disagreements between the winery, nearby residential properties, and the County. This case is currently, and properly, before the Planning Commission for resolution, and the ordinary compliance hearings were not subverted.

9. The code violations alleged in the complaint were valid and supported by photographs, and by county records in the possession of the County Supervisors, the County Planning Department and other entities.

Response: Santa Cruz County Board of Supervisors AGREES

The County agrees with this finding with the clarification that the validity of issues raised in the complaint remain the subject of review.

10. The planning and code compliance staff, below the level of Planning Director, attempted to carry out their responsibilities and enforce the code. They were directed to do otherwise by their superiors.

Response: Santa Cruz County Board of Supervisors DISAGREES

The Planning Director did not direct the planning and code compliance staff to do other than carry out their responsibilities and enforce the code. The code compliance staff conducted investigations and filed a Notice of Violation on the winery property before the Planning Director had even been aware of the issues related to this property. Furthermore, staff had also already secured the winery property owner's cooperation in correcting several of the uncontested alleged violations before the matter had been brought to the attention of the Planning Director. The Planning Director's involvement was related exclusively to two issues: 1) reviewing the code compliance staff's conclusion that language describing the need to regulate certain aspects of the winery operation, which was in the accompanying staff report but not included in the 1976 permit, was not, in fact, a part of the permit, and; 2) whether a vehicle, other than pursuing resolution of the violations through the administrative hearing process, court, or amendment of the 1976 permit could be utilized to address issues never contemplated or included in the 1976 approval.

The Planning Director concurred with the code compliance staff's assessment that the permit, and not the staff report, was the basis of evaluation of whether or not violations exist regarding the winery operation. Aware of the neighbors' concerns and the winery owner's reluctance to open up the 1976 permit in order to accommodate possible new approval conditions, the Planning Director tried, unsuccessfully, to get all interested parties to a point where equally effective alternatives to amending the 1976 permit could be explored.

The matter presently before the Planning Commission for consideration involves questions beyond the code enforcement efforts of the department. To the extent that code compliance actions could be taken, they were and without impediment. The Commission is properly exploring the question of what to do about a permit, issued by the County, that some believe does not adequately delineate or provide protections for surrounding land uses from the activities authorized by that permit.

Conclusions

1. The interventions by the members of the Board of Supervisors have lead to inconsistent application and enforcement of the building codes.
2. The degree of involvement by some supervisors and the phrasing of their memos about actions or outcomes create the appearance of impropriety. Either the planning staff is not capable of handling their duties, or the Supervisors are trying to facilitate special treatment for certain of their constituents. There is a problem in either case.
3. Testimony and documents show the Planning Director and staff caught between the responsibility to support the code enforcement process and the pressure applied by Supervisors.
4. The long drawn out delays in handling the winery issues are ridiculous. Holding hostage the resolution of the building violations pending a new agreement over the meaning of a current and valid use permit is unfairly coercive.

Recommendations

1. The Grand Jury strongly recommends Santa Cruz County adopt an ordinance similar to that of San Diego County regulating the communications between the County Board of Supervisors and the Planning Department staff. The example ordinance in the appendix refers only to public hearings that are part of the permit application process. It is the opinion of the Grand Jury that day to day interference in the Planning Department should be stopped. When the process involves *any* sort of public hearing, communication between the Supervisors and the Planning Department must be closely regulated, as in the example ordinance.

Response: Santa Cruz County Board of Supervisors

The County does not agree with the conclusion that Supervisor contact with Planning Department staff on a day-to-day basis constitutes interference for the reasons indicated in the response to Grand Jury Finding #1. Virtually all land use decisions are appealable by any member of the Board of Supervisors pursuant to the authority set forth in County Code Section 18.10.350. The filing of such an appeal by any member of the

Board automatically results in a fully noticed, de novo public hearing on the subject application before the Board of Supervisors. Because of this very broad authority, it is important to receive comments from Board members on any concerns and issues that they may have regarding a development proposal to ensure that such issues are addressed adequately and in a timely manner during the application review process. Responses that satisfy these criteria help to avoid costly, drawn out review and decision-making regarding development applications. Finally, it should be noted that it is the Planning Department's practice to provide copies of any project-related correspondence from Board members to applicants, and any such correspondence is part of the administrative record and public file on the project.

2. The complaints and violations regarding the winery should be – immediately and without further delay -- adjudicated by the means prescribed in the county codes: a fair and impartial public administrative hearing, with proper advance notice to all interested parties.

Response: Santa Cruz County Board of Supervisors DISAGREES

Due to the issues mentioned above concerning language contained in the permit, a code compliance administrative hearing is not the appropriate forum to resolve the issue. The matter is now properly before the Planning Commission.

3. The Planning Department should immediately formulate and execute an equitable, prioritized plan to close the entire backlog of over 3000 neglected or unreasonably delayed red tag violations in the County. This should be accomplished by the fair exercising of all existing codified options including amnesty, correction, dismissal, public hearings and penalties in whatever combination will eliminate the backlog not later than December 31, 2004. Either the red tags are valid issues that need enforcement, or they are not. Since fines and penalties are designed to cover the bulk of the enforcement costs, the current budgetary problems should not be at issue.

Response: Santa Cruz County Board of Supervisors

This recommendation is being implemented. The Planning Department has been critically reviewing its policies and procedures over the past two years in an effort to streamline the enforcement program and to reduce the inventory of unresolved code compliance cases. Over this period of time, the Board of Supervisors has considered a series of reports from the Planning Department including specific recommendations to accomplish these objectives. In turn, the Board has approved numerous policy changes that have since been implemented, including:

- *Shifting the administration of the hearing officer process from County Counsel to the Planning Department.*
- *De-emphasizing the pursuit of civil penalties in routine cases in favor of negotiated compliance agreements that set forth specific compliance milestones including a timeline for compliance with penalties waived if compliance is achieved.*
- *Approval of a limited enforcement response for minor violations.*

2002-2003 Santa Cruz County Grand Jury Final Report and Responses

- *Enactment of a focused enforcement response where the initial investigation is restricted to the violation reported, related violations, and health and safety hazards.*
- *Approval of a non-enforcement policy for older violations in existence prior to 1980, with certain exceptions.*
- *Amending Chapter 12.01.070 of the County Code to expand the criteria where the Planning Director may approve the issuance of a permit on a property where a violation exists.*
- *Amending the Uniform Building Code to expand the list of work that is exempt from the requirement to obtain a building permit.*
- *Approved specific criteria for closing older, inactive cases.*
- *Amending County Code Chapter 19.01.070 regarding administrative appeals of Code enforcement actions.*
- *Approval of an outreach program for illegal second units.*
- *Approval of several other caseload reduction strategies, including directives to study the site standards in the rural area, and to propose revisions to the regulations governing minor structures associated with residential uses.*

As a result of the implementation of these significant changes in policy, along with other administrative improvements, the Planning Department has reduced the active and inactive caseload by 52.9 %, as reported to the Board of Supervisors on June 3, 2003. In addition to this overall reduction in the code compliance caseload, the department has also improved the efficiency of the process. The department will continue these efforts in the coming year.

4. The Planning Department should not, without some compelling reason, require the resolution of unrelated issues when deciding a course of action on any particular issue.

Response: Santa Cruz County Board of Supervisors

The County will implement this recommendation as allowed under the County Code.

Responses Required

Entity	Findings	Recommendations	Respond Within
The County Planning Department	1-10	1-4	90 Days (Sept. 30, 2003)
County Board of Supervisors	1-10	1-4	60 Days (Sept. 2, 2003)

Note: County Board of Supervisors of Santa Cruz County responded for the County Planning Department.

Appendix – San Diego County Ordinance

This appendix is an example of an ordinance that provides limitations on the kinds of communications and inputs that one county has placed upon itself. They did this to avoid both the appearance and possible acts of impropriety. The following text has been pruned to the relevant sections and is not complete.

ARTICLE XXI^a RULES OF CONDUCT AND PROCEDURE FOR PLANNING AND ZONING PROCESS²

SEC. 375. DEFINITIONS.

These definitions shall govern the construction and application of this Article:

- (a) Decision-making Body. As used herein "decision-making body" shall mean the Board of Supervisors, Planning Commission, Planning Environmental Review Board and the Director of Planning and Land Use.
- (b) Clerk. As used herein "clerk" shall mean the officially designated clerk or secretary of the decision-making body.
- (c) Hearing. As used herein "hearing" shall mean a noticed public hearing required by State law or County ordinance relating to planning and zoning and land use.

[[...]]

SEC. 375.8. RECEIPT OF EVIDENCE OUTSIDE OF HEARING.

- (a) Except as provided herein, no member of the decision-making body shall, after an application necessitating a hearing has been filed with the County, solicit or receive evidence outside of the public hearing.
- (b) The provisions of this section do not apply, however, to the following:
 - 1. Major general plan proposals or amendments to the Zoning Ordinance involving definitions of words or uses in an entire zone, which have broad application in the County as distinguished from application to individual parcels of property;
 - 2. Receipt of unsolicited letters or other documents shall not constitute a violation of this section but their receipt shall be disclosed as provided in Section 375.10;
 - 3. Receipt of evidence after the close of a hearing for the limited purpose of determining whether to request the decision-making body to order that the matter be reheard;
 - 4. Factual inquiries made by members of the Board of Supervisors and the Planning Commission to County staff; or
 - 5. Participation by members of a decision-making body on a task force or committee that has been duly created by the Board.

SEC. 375.9. VIEW OF PROPERTY.

- (a) After an application necessitating a hearing has been filed with the County, no member of a decision-making body shall view the subject property with a proponent or opponent of said application, or other interested parties.
- (b) Where, during the course of a hearing it appears that one or more decision-making body members desire to view the subject property, the hearing shall be continued for that purpose. When the hearing is continued and if the members of the decision-making body so desire, they may individually view the site and shall thereafter report their observations at the continued hearing or as a body may view the site and may be accompanied by proponents, opponents, and other interested parties.

² A new Article, Rules of Conduct and Procedure for Planning and Zoning Process, Sections 375 through 375.17, added by Ord. No. 4781 (N.S.), effective 12-16-76.

2002-2003 Santa Cruz County Grand Jury Final Report and Responses

SEC. 375.10. DISCLOSURE.

A member who has received evidence outside of a hearing or has viewed the subject property, or is familiar with the subject property, shall fully disclose at the hearing such evidence and his observations and familiarity with the property so that the applicant, opponent, interested persons, and other members of the decision-making body may be aware of the facts or evidence upon which he is relying and have an opportunity to controvert it. All written evidence received outside of the hearing shall be filed with the Clerk.

SEC. 375.11. DISCUSSION OF PENDING MATTERS.

No member of a decision-making body shall, after an application necessitating a hearing has been filed with the County, discuss said matter with other members of a decision-making body or with proponents, opponents, or other interested parties, except in the course of and during said public hearing.

SEC. 375.12. CONTACT WITH STAFF ON MATTERS FOR WHICH HEARINGS ARE REQUIRED.

- (a) No member of the decision-making body shall, after an application necessitating a hearing has been filed with the County, solicit or receive any substantive information from County staff outside of the public hearing on said matter.
- (b) The provisions of this Section do not apply, however, to factual inquiries made by members of the Board of Supervisors or members of the Planning Commission or members of the Planning Environmental Review Board, matters which have broad application in the County as distinguished from specific application to individual parcels of property subject of the hearing, nor do they apply to these matters which relate to only procedural aspects of the hearing process, such as anticipated dates of hearings or reasons for delays in setting hearings.

SEC. 375.13. DECISION.

- (a) Members of the decision-making body who receive evidence after conclusion of a hearing shall not participate in the vote on the matter except where the matter is reheard after appropriate notice pursuant to decision-making body order.
- (b) Following completion of the hearing, the decision-making body shall make its decision. Unless otherwise provided by law, the decision-making body shall render its decision within 10 days following the close of the public hearing.
- (c) Whenever the Board of Supervisors holds a hearing and thereafter takes no action because a motion on the item failed to carry by the required affirmative vote, the Board may at that meeting continue the matter for future consideration. If the Board does not do so, any member of the Board may, within thirty days after the date on which the motion failed to carry, docket with the Clerk of the Board a request that the Board reconsider the matter. If no such request is docketed within said thirty day period, or if the Board after reconsidering the matter again fails to take action because a motion thereon fails to carry by the required affirmative vote, then the following shall occur:
 - (1) If the matter is an appeal from a decision of a lower decision-making body, the decision from which the appeal was taken shall be deemed sustained.
 - (2) If the matter is one which by statute or ordinance is under the original jurisdiction of the Board of Supervisors, so that no lower decision has been made, then the matter shall be deemed disapproved.
- (d) In cases where a decision-making body lacked jurisdiction to make the original decision in any planning or zoning matter, whether due to improper notice or other defect, an application for a hearing denovo on such matter will be entertained by the decision-making body.
- (e) Subject to the provisions of Chapter 4 (commencing with Section 86.401) of Division 6 of Title 8 of the San Diego County Code, relating to appeals of environmental determinations, no application for rehearing or reconsideration of matters involving major and minor subdivision map approvals or denials, special use permits, variances and other adjudicatory proceedings will be entertained by a decision-making body.
- (f) Subject to the provisions of Chapter 4 (commencing with Section 86.401) of Division 6 of Title 8 of the San Diego County Code, relating to appeals of environmental determinations, an application for rehearing

2002-2003 Santa Cruz County Grand Jury Final Report and Responses

or reconsideration of amendments to The Zoning Ordinance, including but not limited to reclassification of land, general plan adoptions and amendments, and specific plan adoptions and amendments, will be entertained by a decision-making body only in those instances involving intentional or negligent misrepresentation of facts at the original hearing.

- (g) A request for hearing de novo, rehearing, or reconsideration under the guidelines set out above will be accepted and considered only upon written application signed by the applicant therefore and setting out in detail the reasons for such request including a statement of all facts upon which the application is based.

SEC. 375.14. CONTACT WITH STAFF ON NON-HEARING MATTERS.

- (a) Members of the decision-making body may contact County staff at the level of Department Head, either personally or in accordance with an adopted departmental policy. Such contacts shall, however, be limited to a factual inquiry not involving either the taking of administrative action or the compilation of information not already available and shall not involve matters subject of a hearing except as permitted pursuant to Section 375.8.
- (b) All contacts involving complaints, communications regarding administrative matters, requests for information not readily available, or requests involving the promulgation of an opinion or position shall be made in writing to the appropriate Department Head, who shall be responsible for referral of the contacts to the appropriate staff member and for insuring the complete records in writing shall be kept on all such contacts. Such records shall include the date the contact was received, the department and the name(s) of the staff member(s) who actually performed any necessary work, a record of any response prepared, the date the response was forwarded and the names of all persons to whom the response was forwarded. Replies to such communications shall be published to each member of the decision-making body.
- (c) No member of the decision-making body shall request from County staff the preparation of a report or other written compilation of material, not readily available and involving the expenditure of significant staff time (8 hours or more), unless the decision-making body by motion duly made and adopted shall have approved the preparation of a report or the compilation of the material.

[[...]]

SEC. 375.17. MISDEMEANOR.

Every member of a decision-making body who knowingly and willfully violates any section of this Article is guilty of a misdemeanor punishable by imprisonment in the County Jail for a period not exceeding six months, or by a fine not exceeding \$500, or by both.