



County of Santa Cruz

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March 20, 2002

Agenda: April 9, 2002

Board of Supervisors
County of Santa Cruz
701 Ocean Street, Room 500
Santa Cruz, California 95060

Re: RESPONSE TO QUESTIONS CONCERNING THE TOWER LODGE PROJECT

Dear Members of the Board:

On January 29, 2002, your Board considered a report on the Tower Lodge project. During the public testimony portion of the hearing Attorney Joe Ritchey threatened to initiate litigation against the County concerning the Tower Lodge. At the conclusion of that hearing, your Board directed that staff respond to certain questions and issues (see attached Minute Order). These matters concern the legal challenge posed by Mr. Ritchey: (1) Update the legal analysis on the County's authority to limit the occupancy of single family dwelling units, and determine whether the County may establish a limit on the number of bedrooms within a single family residence; and (2) Analyze Tower Lodge's current status as a residence. Each matter will be considered in turn.

(1) Updated legal analysis on the County's authority to limit the occupancy of single family dwelling units.

The County Code presently defines the term "dwelling unit" without placing limitations on the number of persons that may therein reside:

A structure for human habitation providing complete independent living facilities for one or more persons, including permanent provisions for living, sleeping, eating,

cooking and sanitation, with the restrictions that only one kitchen or set of food preparation facilities is allowed in each dwelling unit and an interior stairway shall be provided between all stories. County Code Section 13.10.700-D (Emphasis added.)

However, under its definition for “Family”, the County Code does establish a numerical limitation:

Family. One person living alone, or two or more persons related by blood or marriage or a group of not exceeding five persons (excluding servants) who need not be related by blood or marriage, living together as a single housekeeping unit, in a dwelling unit as distinguished from a group occupying a hotel, club, fraternity or sorority house. County Code Section 13.10.700-F (Emphasis added.)

Because the cited definition restricts the total number of unrelated occupants that may reside within a dwelling unit (not to exceed five), places no corresponding limit on the number of persons related by blood or marriage, it is the opinion of this Office that this provision is not legally enforceable under the ruling in *City of Santa Barbara v. Adamson* (1980) 27 Cal.3d 123. Generally speaking, a land use restriction which focuses on the identity of a dwelling’s occupants (i.e., a biological family versus a group of unrelated individuals, or renters versus owner occupants), rather than the intensity of use to which the dwelling is put, may be unlawful.

On State Constitutional privacy grounds, the Supreme Court in *Adamson* struck down an ordinance which imposed a numerical limitation on the number of nonfamily-related persons who could live together in a single-family residential zone district.

‘The fatal flaw in attempting to maintain a stable residential neighborhood through the use of criteria based upon biological or legal relationships is that such classifications operate to prohibit a plethora of uses which pose no threat to the accomplishment of the end sought to be achieved. . . . As long as a group bears the “generic character of a family unit as a relatively permanent household,” it should be equally as entitled to occupy a single family dwelling as its biologically related neighbors.’ *City of Santa Barbara v. Adamson*, 27 Cal.3d at 133 at p. 134, quoting from *State v. Baker* (1979) 81 N.J. 99 [405 A.2d 368, 371-372].

The Court noted that local governments had other tools to address the problems created by overcrowding which would not impair constitutional rights:

...population density can be regulated by reference to floor space and facilities. Noise and morality can be dealt with by enforcement of police power ordinances and criminal statutes. Traffic and parking can be handled by limitations on the number of cars (applied evenly to all households) and by off-street parking requirements. *In general, zoning ordinances are much less suspect when they focus on the use than when they command inquiry into who are the users.* (Emphasis as in original.) *City of Santa Barbara v. Adamson*, 27 Cal.3d at 133.

The reasoning in *Adamson* has been consistently applied in subsequent California decisions. In *City of Chula Vista v. Pagard* (1981) 115 Cal. App. 3d 785, 798-799, a City's ordinance was found to have violated defendants' constitutional right of privacy because it improperly distinguished between "family" members and groups of more than three other persons. In *Ewing v. City of Carmel-by-the-Sea* (1991) 234 Cal. App. 3d 1579, 1596-1597, a City's ordinance prohibiting vacation rentals within residential districts was found to be within constitutional limits because privacy rights were not implicated. In *City of Los Altos v. Barnes* (1992) 3 Cal. App. 4th 1193, 1200-1201, a City's ordinance banning home occupation uses in a residential district legitimately classified based on the type of use, and not the user. Finally, in *College Area Renters and Landlord Assn. v. City of San Diego* (1996) 42 Cal. App. 4th 543, an ordinance limiting the number of adults in rented single-family housing was found to have violated constitutional principles to the extent that it distinguished between owner-occupied versus renter-occupied residences.

The County may continue to enforce the other provisions of the Code that do establish minimum standards for addressing particular impacts related to residential uses. These measures include police power ordinances such as zoning regulations or nuisance statutes. For example, Section 13.10.552 establishes the standards for off-street parking required for residential uses. In addition, standards for minimum lot widths, maximum lot coverage and floor area to lot area ratios, set-backs, maximum building height and story limitations are also established to address concerns related to residential density. Finally, special procedures, design guidelines and findings are required for new dwellings that are 7,000 square feet or greater in size.

Furthermore, the County may establish “across-the-board” limits on population density in single-family dwellings, if they are applied evenly to all households regardless of consanguinity or affinity among its occupants. Although the Appellate Court in *Chula Vista* invalidated the city’s ordinance, it did identify other types of density limitations that would be permissible:

Such appropriately drawn ordinance [sic] may and should address the population density problem directly by tying maximum permissible occupancy in a dwelling to objective standards such as across-the-board minimum floor space per person requirement, person per quantum of open space, persons per a bedroom or bathroom, or any other generally accepted standard which defines overcrowding. City of *Chula Vista v. Pagard*, supra, 115 Cal. App. 3d at 797.

Similarly, a limit on the total number of bedrooms allowed within a single-family dwelling unit would be another type of regulation that could lawfully be enacted by the County as a means of addressing the problems of overcrowding.

(2) Analysis of Tower Lodge’s status as a residence.

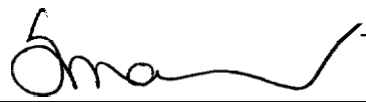
Your Board requested information regarding the allowed use of the property given its history. As discussed at the January 29, 2002 Board meeting, the main structure on the property was originally constructed as a lodge in 1926 and operated **as** a resort for many years thereafter. One of the smaller structures was constructed in 1921 and the rest were constructed at various times prior to the issuance of any County permits. In the early 1970's, the property was purchased and operated as a boarding house. Following a **fire**, the property owner was informed that a use permit was required for the boarding house use and an application was made for that use. **As** detailed in the January 29th report to your Board, a number of **use** permits were issued between 1974 and 1977 to authorize various uses and additions to the structures on the property.

The uses allowed by these prior use permits have ceased, and pursuant to County Code Section 18.10.132(d), there is no valid use permit for any discretionary use on the property. Consequently, the allowed uses of the property become those uses listed in County Code Section 13.10.322(b) - the Residential Uses Chart. In the R-1 zone district (the Tower Lodge property is zoned R-1-2 acre), the principal permitted use is a single family dwelling, a use that requires no discretionary approval.

IT IS THEREFORE RECOMMENDED that your Board accept **and** file this report.

By 
RAHN GARCIA
Chief Assistant County Counsel

RECOMMENDED:


SUSAN A. MAURIELLO
County Administrative Officer