



COUNTY OF SANTA CRUZ

PLANNING DEPARTMENT

701 OCEAN STREET, 4TH FLOOR, SANTA CRUZ, CA 95060
 (831) 454-2580 FAX: (831) 454-2131 TDD: (831) 454-2123

ALVIN JAMES, DIRECTOR

May 8, 2002

Agenda: May 21, 2002

Board of Supervisors
 701 Ocean Street
 Santa Cruz, CA 95060

**Report on Code Compliance Investigations
 on APN's 108-181-21 and 108-181-22
 Owned by John and Jeffery De La Pena**

Members of the Board:

On March 12, 2002 your Board approved a report on a series of enforcement policies and administrative changes in the County's enforcement program. Your Board, in response to a presentation from Mr. Gerald Bowden, directed that a report be prepared for today's agenda on enforcement actions on APNs 108-181-21 and APN 108-181-22 owned by Mr. John De La Pena and Mr. Jeffery De La Pena.

Background

On May 12, 1999 a citizen complaint was received indicating that both the properties in question were blighted with debris, junk, inoperative equipment and inoperative vehicles. In addition it was alleged that a trucking business was in operation without the required development approvals and permits. A site inspection, on May 13, 1999, confirmed the presence of debris, junk, inoperative equipment and inoperative vehicles on both parcels. In addition several large commercial scale trucks were observed parked on and in the public right-of-way adjacent to APN 108-181-22.

Consequently a Notice of Violation was issued for a Neglected Property on APN 108-181-21. A separate Notice of Violation was issued for a Neglected Property and for a violation of the zoning ordinance, i.e. operation of a commercial trucking business without the required development approvals and permit on the second parcel, APN 108-181-22. Reinspection on May 24, 1999 indicated that the Neglected Property violations had been corrected on both properties, but that the trucking business continued in operation on APN 108-181-22.

Subsequently Mr. De La Pena retained legal counsel who met with enforcement staff and provided preliminary information in support of the position that the commercial trucking business was in operation prior to the adoption of the County zoning ordinance regulating this type of operation. Because the property owner, through his counsel, contested the conclusion of the enforcement staff, and asserted that there was information that could establish preexisting rights, county staff did not record the Notice of Violation on title to the property, nor has any other enforcement action been pursued.

Current Status

In researching this case, it does not appear that Mr. Bowden has submitted the additional information that the County previously requested in order to make a final determination regarding the issue of preexisting, non-conforming rights. Recently, our staff contacted his Office to follow-up on this matter; however, he was out of the area at that time. Therefore, we have forwarded another copy of our earlier correspondence to his attention and will be in personal contact with him upon his return.

When we receive the information from Mr. Bowden concerning the non-conforming issue, we will make a prompt determination which confirms, or denies, preexisting non-conforming rights to the operation of a commercial trucking business on parcel APN 108-181-22, County records will be updated to reflect this determination and the investigation will be either resolved, or the case will be scheduled for further enforcement action.

Sincerely,



Alvin D. James
Planning Director

Recommended:



Susan A. Mauriello
County Administrative Officer

cc: Gerald Bowden, Attorney at Law

foundation within any one year period. Structural repairs in kind that result in greater than the aggregate of 10% of the exterior walls, roof, or foundation being repaired within any one year period shall be deemed a structural alteration. The replacement of the interior or exterior wall coverings or the replacement of the windows or doors without altering their openings will not be included in this calculation. The Planning Director may require that a termite inspector, registered engineer or other professional(s) acceptable to the Planning Director be retained at the applicant's expense to certify that portions of the structure which the plans show as proposed not to be structurally repaired are in fact structurally sound and that it will not be necessary to repair or alter such portions of the structure during the course of construction.

6. Reconstruction: The rebuilding of a structure or portion(s) of a structure. A structural alteration or repair that involves greater than 50% of the exterior walls being altered within any five year period shall be deemed a reconstruction. The Planning Director may require that a termite inspector, registered engineer or other professional(s) acceptable to the Planning Director be retained at the applicant's expense to certify that portions of the structure which the plans show as proposed not to be structurally repaired or altered are in fact structurally sound and that it will not be necessary to repair or alter such portions of the structure during the course of construction.

7. Significantly Nonconforming Use: The use of a structure or land that was legally established and maintained prior to the adoption, revision, or amendment of Chapters 13.10 or 13.11, does not conform to the present General Plan/Local Coastal Program land use designation, and has not lost its nonconforming status due to cessation of use as outlined in Sections 13.10.260, 13.10.261, or 13.10.262.

8. Structural Alteration: Any change in the supporting members of a building, such as the foundation, bearing walls, columns, beams, girders, floor, ceiling or roof joists, and roof rafters or structural repairs in kind greater than 10% but less than 50.1% of the exterior walls. Roofs and foundations may be replaced. No physical expansion shall be permitted unless expressly authorized in Sections 13.10.261 or 13.10.262. Structural alterations or repairs that result in greater than 50% of the exterior walls being altered within any five year period shall be deemed a reconstruction. The replacement or alteration of the interior or exterior wall coverings or the replacement of windows and doors without altering their openings will not be included in this calculation. The Planning Director may require that a termite inspector, registered engineer or

other professional(s) acceptable to the Planning Director be retained at the applicant's expense to certify that portions of the structure which the plans show as proposed to remain are in fact structurally sound and that it will not be necessary to alter such portions of the structure during the course of construction.

(c) General Requirements.

1. Determination of Nonconforming Status. The property owner shall have the burden of proof in establishing the nonconforming use status of any land or structure. The Planning Director may charge a fee, as stated in the Uniform Fee Schedule, for the review of submitted documents which shall be based upon a reasonable estimate of the cost to the County for verifying the claim.

2. Continuation of Nonconforming Rights. The lawful use of land existing on the effective date of the adoption or change of zoning designation or of the zoning regulations may be continued, even if the use no longer conforms to the regulations specified by Chapter 13.10 for the district in which the land is located and Chapter 13.11, provided that the use shall not be intensified or expanded to occupy a greater area than that occupied by the use at the time of adoption or change in zoning designation or zoning regulations.

Exceptions:

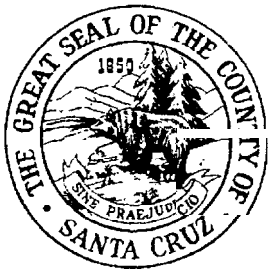
(i) The nonconforming use of a structure may be changed to a use of the same or less intense nature, provided that in each case a Level V Development Permit, or lower level Development Permit as provided in Section 13.10.261, is obtained.

(ii) The nonconforming use of a portion of a building may be extended throughout the building, provided that in each case a Level V Development Permit, or lower level Development Permit as provided in Section 13.10.261, is obtained.

3. Loss of Nonconforming Status. Loss of nonconforming status due to cessation of use shall be as provided in Sections 13.10.261 and 13.10.262.

4. Reconstruction of Structures Containing Nonconforming Uses Damaged by the Loma Prieta Earthquake. Notwithstanding any other provision of this Section, any building or structure damaged or destroyed as a result of the earthquake of October 17, 1989 and/or associated aftershocks may be repaired or reconstructed, provided the structure:

(i) Will be sited in the same location on the affected property as the destroyed structure, and that location is determined to be located away from potentially hazardous areas, as required by Chapter 16.10 of this Code;



County of Santa Cruz

PLANNING DEPARTMENT

701 OCEAN STREET, SUITE 400, SANTA CRUZ, CA 95060-4073
 (831) 454-2580 FAX: (831) 454-2131 TDD: (831) 454-2123

ALVIN D. JAMES, DIRECTOR

September 13, 2000

Gerald D. Bowden
 Attorney
 4665 Scotts Valley Drive
 Scotts Valley, Ca. 95066-4291

Dear Mr. Bowden:

SUBJECT: DE LA PENA PROPERTY;
 ASSESSORS' PARCEL NOS: 108-181-21,22
 ADDRESS: 265,273 CORRALITOS ROAD, WATSONVILLE

Your July 6, 1999, December 15, 1999, February 16, 2000 and, April 12, 2000 letters summarize why you believe the de la Pena family has pre-existing rights for a commercial truck hauling business on parcels 108-181-21 and/or 108-181-22. You requested a formal document from the county indicating that at this time there are no violations of county code and requested this office to expunge the red tag.

Before this can happen, the de la Pena family must provide proof of pre-existing rights status as required by County Code Section 13.10.260 (c)1. The following **is** a list of questions for the de la Pena family to answer to establish pre-existing rights. The property owners must include burdens of proof documents to support their answers to determine that the hauling business has operated continuously since 1958 and the business has not expanded since 1958. This proof can be provided by financial records, income tax receipts or fictitious name statements.

HAULING, GRADING, EXCAVATION BUSINESS

1. Are the property owners attempting to establish truck hauling business on parcel 108-181-21 or 108-181-22?

2. Has the trucking company always been a year around commercial business instead of seasonal?
3. Have the trucks and equipment been used continuously for hauling, grading, and excavation since 1958?
4. When did the property owners begin to use the tractor trucks to haul and deliver sawdust and compost? On May 12, 1999, Jeffrey de la Pena said that he currently uses three tractor trucks to haul and deliver sawdust, compost, etc. from mills to home owners.

AGRICULTURE RELATED USES

1. Has the de la Pena family trucked only their apples and other produce or have they also trucked other people's produce prior to 1958?
2. How many trucks did the family own in 1958? John de la Pena said on May 12, 1999, that when he was 17-18 years old, the family used three bob tails and a semi to haul family apples and artichokes.

The Planning Department staff will review these records, receipts, and statements to determine if the property owners have pre-existing rights for a produce and/or grading/and/or sawdust, etc. truck hauling business.

If the property owner establishes pre-existing rights for the following reasons:

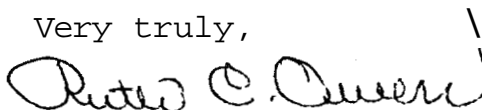
1. That they have continuously hauled sawdust and compost from mills to homeowners or since 1958; and/or
2. Hauled excavating and grading since 1958, and;
3. They have not expanded the size of this company;

This would be the only way that an agriculture service establishment trucking company could continue on parcels 108-181-21 or 22.

Santa Cruz County Code 13.10.312 use chart does not allow a trucking company in a commercial agriculture zone district. The de la Pena family could apply for a Level 5 Agriculture Service Establishment for produce hauling on parcel 108-181-21 or 22 because this property is zoned for agriculture use. Contact the zoning counter staff at 454-2130 if you have questions regarding zone districts.

If the de la Pena family does not prove continuous pre-existing rights by November 14, 2000, this violation will be recorded, and I will forward this matter to legal staff to schedule an Administrative Hearing. The Hearing Officer can issue penalties that may be levied. In addition to civil penalties that may be levied, all costs incurred in obtaining compliance are billed to the property owner. If you have questions about the investigation, contact me at 454-3201.

Very truly,



Ruth C. Owen
Code Compliance Investigator

cc: Jeffrey de la Pena
273 Corralitos Road
Watsonville, Ca. 95076

John and Charlotte de la Pena
265 Corralitos Rd.
Watsonville, Ca. 95076