

Lori Darnley

From: JOE RITCHEY ["joe.ritchey"@stanfordalumni.org]
Sent: Monday, April 27, 2009 1:16 PM
To: danbronson@sbcglobal.net
Cc: Michael Bethke; Martha Fiorovich; Richard Irish; David Parks; Lori Darnley
Subject: County-- Building Code Appeals Board --- County Code and Information Code Enforcement Disclosures Do Not Mention the Landowner Has the Right to Have a Building Code Matter Go Before the Building Code Appeals Board. All Building Code Matters Go to Pla

County-- Building Code Appeals Board --- County Code and Information Code Enforcement Written Disclosures Do Not Mention the Landowner Has the Right to Have a Building Code Matter Go Before the Building Code Appeals Board. All Violation Matters Are Stated as Going to the Planning Director, or Designee, or to Administrative Hearing Officer Where Planning **Staff Decision Is Presumed to Have Been Correct and Landowner must Prove it Was Not Correct**

Dear Board Member,

In the attachment entitled 'Code Compliance Overview', the County of Santa Cruz Planning Department explains how they interpret County rights of enforcing the State Building Codes. As you will read, this document does not suggest the existence of any right to appeal to your Board. Also attached is an more detailed document entitled "Enforcement Alternatives"— Again nothing is mentioned about any right to a hearing before the Building Code Appeals Board. The landowner is not even given an option to have a Building Code matter go before the Building Code Appeals Board.

Various sections of the County Code mention the right to a review by the Planning Director or at places the right to an administrative appeal before hearing officers . The code is being interpreted, administered and enforced by unlicensed County Staff. Landowners, contractors and "interested parties" are being denied the right to have the staff decisions appealed to the only Board that under State law is supposed to hear appeals of all decisions relating to Building Code decisions, enforcement, interpretation, etc !

The County has for years been aware of its illegal conduct and aware of the effect on the landowner. If the landowner does not prevail at the administrative level – and they usually do not since there is a code section that says staff action shall be presumed to have been correct – landowner will not only have to pay the County 135-145\$ per hour for each staff person's time spent on his case, but will often have to pay penalties and try to obtain funds with a 'red tag' recorded on the property or showing on his or her credit record as a general claim of money due and owing yet unpaid a creditor . While I have no statistics to support my belief, I suspect landowners have suffered not only great heartache, anguish and suffering, but millions of dollars in damages, costs and losses.

In December 2005 I wrote the County and advised them they were not in compliance with the California State Version of the International Building Code. I revealed I had researched the California State Building Standards Commission repository for the County filed materials and had researched the Board of Supervisors locally retained compliance materials . I had done the research because that summer, while my family and I were in Alaska, a Granite Construction Supervisor had made a mistake while directing work needed as a result of a tree falling onto the access road for 17 acres my family owns just out of Scotts Valley City limits. He left me a message that the County had red tagged the

5/12/2009

15.a

work. The 'violation' related to interpretation of the County Building Code.

Upon my return I had asked for an appeal. I was given one work day's notice of a hearing before the Planning Director's representative. I objected to the Hearing on numerous grounds. I had been studying land use since 1966, the year before beginning my two year internship with the City of Concord as part of my honors class at Stanford Law School. I had earned the highest grade in my Land Use Control and Development class . From 1968 to 1972 I was an International Law Instructor and Lecturer at the University of Auckland , New Zealand and University of Natal, South Africa. Other International work was performed under the aegis of the Hoover Institute at Stanford University.

I have a 'life long' knowledge of Santa Cruz climatic, geological, or topographical conditions. My children are the 4th generation to live in the same 1700 sq ft house my grandfather first lived in off La Madrona, near Sims Road. I started Scotts Valley School in 1947. I have come to love our County, our State and Country, as well as other countries and people of the world. As a result of my work, I have been to various areas of numerous continents , to over 18 countries. I came to realize many of the problems we face are often quite similar to problems other Counties, States and Countries have to deal with as well . Most professionals have also come to accept this as a working premise. This is certainly the case with Building Codes.

In 1994 the International Code Council - known by the acronym 'the ICC'— was founded by the union of the BOCA, ICBO, and SBCCI. The ICC was created for the expressed purpose to develop a single national building code in the United States. The Council of American Building Officials (CABO), the previous umbrella organization for the three nationally recognized model code organizations in the United States was incorporated into the ICC in November of 1997. Each of the previous 'joining bodies' had been comprised of officials who are responsible for the enforcement of building codes in their state and local jurisdictions.

It is now reported that " The I-Codes", which include the IBC and other coordinated building safety and fire prevention codes, are the most widely recognized building codes in the United States . As of 2005 the IBC had been adopted and was being used in 48 states of our United States. Most adopted the IBC as written . Only a few states have modified the IBC . Among those states that made modifications of the original text are California, Florida, Massachusetts, Michigan, New York and a few others which have made minor modifications to accommodate local laws and regulations.

I will be sending you materials in the next week but ask you now take a small amount of time to read how a few other jurisdictions have interpreted the International Building Code, the same code the County of Santa Cruz needs to now interpret and apply. Planning Staff has given you some opinions. After you read the yellow highlighted sections of the attachment entitled 'CITY OF S. C. CITY INSPECTOR TRAINING ', you might want to ask if your Board has been receiving advice from staff personal the State of California considers qualified to be giving such advice .

The City of Santa Cruz memo will take less than a minute to read. The attached document entitled "State Law Certification of Building Officials Requirements" expands the explanation of licensing and certification requirements. While evidence may exist, I have not seen evidence the County of Santa Cruz is in compliance with state mandated qualification standards. Not only should their advice be suspect, considering the extent of and length of noncompliance, their past decisions may be void or voidable . In law, if it were to be discovered an unlicensed lawyer had been a judge deciding cases, the validity of his decisions would be very suspect .

Once you have read the City of Santa Cruz memo, I 'implore ' you read a wonderful recent document written by the State Of Ohio. I have researched the International Building Code as interpreted and

applied by many other states and several other countries , such as Canada, Australia and others. Ohio adopted the IBC in 1982 . The written explanation of the Board of Appeals function and benefits is the best explanation I have ever seen. I rarely state certainty but as to this writing, I am certain you will be impressed by the clarity yet brevity of this explanation.

As I noted in the beginning of this communication , my ' interest' in land use matters is not just academic. When I asked for the hearing hearing, I was offered a hearing before a Planning Department employee who had not been certified as required by Health & Safety Code § 18949.28 . The official who had "red tagged" the land my family owns was also uncertified. I believe no one who has had contact with my matter has been certified as the IBC requires.

Numerous other fundamental things were, and still are, improper about the County process. In addition to the hearing notice having been sent on a Friday informing me the hearing was to commence the coming Tuesday, the notice also revealed in bolded letters that if I was not successful in my attempt to prove the employee had been mistaken, I would have to reimburse the County for all staff time spent on my matter and I would have to do what they tell me to do about the red tag.

As that was to be the only appeal/review , and since the consequences could be severe, and since local code then and now requires the landowner prove the citation was not correct [in other words their was and is a local code presumption that the employee is always correct and that appellant has the burden to prove employee was wrong], I was, with only one day to prepare, concerned I would not be able to assemble my materials and witnesses and be sufficiently organized and informed to convince the Department they had mis-interpreted and/or misapplied the Code. I asked for a new date and for copies of materials they had relied upon in issuing the red tag or used for support for their interpretation .

To my disappointment there was no reply. The red tags were recorded against my titles and still remain to this day. They were recorded with no outside, impartial review, no offer or notice of a right to an appeal, ever being offered. There was only a one work day notice of the right to an intra-departmental 'stacked' review where an uncertified co-worker of the un-certified employee, overseen by an uncertified Planning Director who had no training or education as a Building Official nor in the Building or Building Design trades would start the hearing with a County mandatory presumption the uncertified County employee was correct. If my presentation failed to reverse the mind set of the County employee, I would owe 135\$ per hour for each hour a county employee worked on the matter as well as other costs , fees and expenses .

I will be sending additional communications next week. I leave you with the question that if the City knew about the certification issue in 2003, why didn't the County ? If the County has been deciding building code matters using uncertified inspectors , planners and officials , presumed not qualified to be making decisions relating to the code they were supposed to be administering, why should their decisions be presumed correct ? In fact, are the County actions taken by and under the aegis of uncertified inspectors , planners and officials even valid ? Further, as the City Of Santa Cruz provides 30 days to file an appeal as to all 'non-technical' decisions and substantive adverse notices, why should the County only allow 14 days. As the County provides 30 days to appeal some matters [for instance see County Code §12.10.425- "Abatement of Structural and Geologic Hazards", 16.54.098 "Appeals and review of order" and others], why not appeals to the Building Code Board of Appeals? Could it really be that County wants to limit the number of 'valid' appeals since it would mean more money and less work for the County ?

As this communication is getting over-long, I end with a question about why was the Department denying landowners their State mandated rights of appeal ? Could it be that the County was taking in so much money by denying landowners the appeal rights required by the IBC that they have not wanted

to shut of the flow of money into the Planning Department coffers ? The effective date of AB 717 was January 1, 1996 . If you were to request an audit of the amount of money the County has received over the time they have been denying landowners State Statute rights of appeal , you will likely learn the Department has [through their own clearly illegal conduct of refusing appeals and using non-certified employees to interpret , administer and enforce the ICC] taken in many hundreds of thousands of dollars. One must surely admit the illegal process has been a steady and large source of income for the County yet great heartache and expense for the landowner and those in the Building and Construction Professions and Industry.

Some have suspected the Department knew the wrongfulness of what they were doing yet continued doing it because of the amount of money they were bring in through the red tag process, penalties, fines and the 135\$ per hour charges was important to the Department. In fact there is a ordinance requiring the money received through code enforcement process be reserved first for payment of wages and costs of the unlicensed/uncertified Department's employees necessary to inspect, cite , enforce and adjudicate violations of a code as to which they are not trained to interpret , apply, enforce or adjudicate.

So much money is being taken in that the County recently enacted an ordinance that 'spills over' the excess money to the General Fund. At the meetings, and conferences in my matter, most always the County showed up with four (4) un-certified persons in attendance. That came to 540\$ per hour. This is a very illegal but very large income business activity. Has there been an 'unlawful' plan to extract money from landowners. Many are convinced the County has been ignoring not only 'landowner rights' but ignoring State Law. Some even go so far as to state the County has knowingly been violating State Law .

Thank you,

Joe Ritchey

Lori Darnley

From: DAVE PARKS [parks@cruzio.com]
Sent: Monday, April 27, 2009 6:14 PM
To: JOE RITCHEY; danbronson@sbcglobal.net
Cc: Michael Bethke; Martha Fiorovich; Richard Irish; Lori Darnley
Subject: Re: County-- Building Code Appeals Board --- County Code and Information Code Enforcement Disclosures Do Not Mention the Landowner Has the Right to Have a Building Code Matter Go Before the Building Code Appeals Board. All Building Code Matters Go to

Mr. Ritchey:
 Thank you for the information. I will review it.
 - Dave Parks

----- Original Message -----

From: JOE RITCHEY
To: danbronson@sbcglobal.net
Cc: Michael Bethke ; Martha Fiorovich ; Richard Irish ; David Parks ; Lorie Darnley
Sent: Monday, April 27, 2009 1:15 PM
Subject: County-- Building Code Appeals Board --- County Code and Information Code Enforcement Disclosures Do Not Mention the Landowner Has the Right to Have a Building Code Matter Go Before the Building Code Appeals Board. All Building Code Matters Go to Planning Director, or Designee, or to Administrative Hearing Officer and Staff Decision Is Presumed to Have Been Correct .

County-- Building Code Appeals Board --- County Code and Information Code Enforcement Written Disclosures Do Not Mention the Landowner Has the Right to Have a Building Code Matter Go Before the Building Code Appeals Board. All Violation Matters Are Stated as Going to the Planning Director, or Designee, or to Administrative Hearing Officer Where **Planning Staff Decision Is Presumed to Have Been Correct and Landowner must Prove it Was Not Correct**

Dear Board Member,

In the attachment entitled 'Code Compliance Overview', the County of Santa Cruz Planning Department explains how they interpret County rights of enforcing the State Building Codes. As you will read, this document does not suggest the existence of any right to appeal to your Board. Also attached is an more detailed document entitled "Enforcement Alternatives"— Again nothing is mentioned about any right to a hearing before the Building Code Appeals Board. The landowner is not even given an option to have a Building Code matter go before the Building Code Appeals Board.

Various sections of the County Code mention the right to a review by the Planning Director or at places the right to an administrative appeal before hearing officers . The code is being interpreted, administered and enforced by unlicensed County Staff. Landowners, contractors and "interested parties" are being denied the right to have the staff decisions appealed to the only Board that under State law is supposed to hear appeals of all decisions relating to Building Code decisions, enforcement, interpretation, etc !

The County has for years been aware of its illegal conduct and aware of the effect on the landowner. If the landowner does not prevail at the administrative level – and they usually do not since there is a code section that says staff action shall be presumed to have been correct – landowner will not only have to pay the County 135-145\$ per hour for each staff person's time spent on his case,

but will often have to pay penalties and try to obtain funds with a 'red tag' recorded on the property or showing on his or her credit record as a general claim of money due and owing yet unpaid a creditor . While I have no statistics to support my belief, I suspect landowners have suffered not only great heartache, anguish and suffering, but millions of dollars in damages, costs and losses.

In December 2005 I wrote the County and advised them they were not in compliance with the California State Version of the International Building Code. I revealed I had researched the California State Building Standards Commission repository for the County filed materials and had researched the Board of Supervisors locally retained compliance materials . I had done the research because that summer, while my family and I were in Alaska, a Granite Construction Supervisor had made a mistake while directing work needed as a result of a tree falling onto the access road for 17 acres my family owns just out of Scotts Valley City limits. He left me a message that the County had red tagged the work. The 'violation' related to interpretation of the County Building Code.

Upon my return I had asked for an appeal. I was given one work day's notice of a hearing before the Planning Director's representative. I objected to the Hearing on numerous grounds. I had been studying land use since 1966, the year before beginning my two year internship with the City of Concord as part of my honors class at Stanford Law School. I had earned the highest grade in my Land Use Control and Development class . From 1968 to 1972 I was an International Law Instructor and Lecturer at the University of Auckland , New Zealand and University of Natal, South Africa. Other International work was performed under the aegis of the Hoover Institute at Stanford University.

I have a 'life long' knowledge of Santa Cruz climatic, geological, or topographical conditions. My children are the 4th generation to live in the same 1700 sq ft house my grandfather first lived in off La Madrona, near Sims Road. I started Scotts Valley School in 1947. I have come to love our County, our State and Country, as well as other countries and people of the world. As a result of my work, I have been to various areas of numerous continents , to over 18 countries. I came to realize many of the problems we face are often quite similar to problems other Counties, States and Countries have to deal with as well . Most professionals have also come to accept this as a working premise. This is certainly the case with Building Codes.

In 1994 the International Code Council - known by the acronym 'the ICC' - was founded by the union of the BOCA, ICBO, and SBCCI. The ICC was created for the expressed purpose to develop a single national building code in the United States. The Council of American Building Officials (CABO), the previous umbrella organization for the three nationally recognized model code organizations in the United States was incorporated into the ICC in November of 1997. Each of the previous 'joining bodies' had been comprised of officials who are responsible for the enforcement of building codes in their state and local jurisdictions.

It is now reported that " The I-Codes", which include the IBC and other coordinated building safety and fire prevention codes, are the most widely recognized building codes in the United States . As of 2005 the IBC had been adopted and was being used in 48 states of our United States. Most adopted the IBC as written . Only a few states have modified the IBC . Among those states that made modifications of the original text are California, Florida, Massachusetts, Michigan, New York and a few others which have made minor modifications to accommodate local laws and regulations.

I will be sending you materials in the next week but ask you now take a small amount of time to read how a few other jurisdictions have interpreted the International Building Code, the same code the County of Santa Cruz needs to now interpret and apply. Planning Staff has given you some opinions. After you read the yellow highlighted sections of the attachment entitled 'CITY OF S. C. CITY INSPECTOR TRAINING ', you might want to ask if your Board has been receiving advice

from staff personal the State of California considers qualified to be giving such advice .

The City of Santa Cruz memo will take less than a minute to read. The attached document entitled "State Law Certification of Building Officials Requirements" expands the explanation of licensing and certification requirements. While evidence may exist, I have not seen evidence the County of Santa Cruz is in compliance with state mandated qualification standards. Not only should their advice be suspect, considering the extent of and length of noncompliance, their past decisions may be void or voidable . In law, if it were to be discovered an unlicensed lawyer had been a judge deciding cases, the validity of his decisions would be very suspect .

Once you have read the City of Santa Cruz memo, I 'implore ' you read a wonderful recent document written by the State Of Ohio. I have researched the International Building Code as interpreted and applied by many other states and several other countries , such as Canada, Australia and others. Ohio adopted the IBC in 1982 . The written explanation of the Board of Appeals function and benefits is the best explanation I have ever seen. I rarely state certainty but as to this writing, I am certain you will be impressed by the clarity yet brevity of this explanation.

As I noted in the beginning of this communication , my ' interest' in land use matters is not just academic. When I asked for the hearing hearing, I was offered a hearing before a Planning Department employee who had not been certified as required by Health & Safety Code § 18949.28 . The official who had "red tagged" the land my family owns was also uncertified. I believe no one who has had contact with my matter has been certified as the IBC requires.

Numerous other fundamental things were, and still are, improper about the County process. In addition to the hearing notice having been sent on a Friday informing me the hearing was to commence the coming Tuesday, the notice also revealed in bolded letters that if I was not successful in my attempt to prove the employee had been mistaken, I would have to reimburse the County for all staff time spent on my matter and I would have to do what they tell me to do about the red tag.

As that was to be the only appeal/review , and since the consequences could be severe, and since local code then and now requires the landowner prove the citation was not correct [in other words their was and is a local code presumption that the employee is always correct and that appellant has the burden to prove employee was wrong], I was, with only one day to prepare, concerned I would not be able to assemble my materials and witnesses and be sufficiently organized and informed to convince the Department they had mis-interpreted and/or misapplied the Code. I asked for a new date and for copies of materials they had relied upon in issuing the red tag or used for support for their interpretation .

To my disappointment there was no reply. The red tags were recorded against my titles and still remain to this day. They were recorded with no outside, impartial review, no offer or notice of a right to an appeal, ever being offered. There was only a one work day notice of the right to an intra-departmental 'stacked' review where an uncertified co-worker of the un-certified employee, overseen by an uncertified Planning Director who had no training or education as a Building Official nor in the Building or Building Design trades would start the hearing with a County mandatory presumption the uncertified County employee was correct. If my presentation failed to reverse the mind set of the County employee, I would owe 135\$ per hour for each hour a county employee worked on the matter as well as other costs , fees and expenses .

I will be sending additional communications next week. I leave you with the question that if the City knew about the certification issue in 2003, why didn't the County ? If the County has been deciding building code matters using uncertified inspectors , planners and officials , presumed not qualified to

be making decisions relating to the code they were supposed to be administering, why should their decisions be presumed correct? In fact, are the County actions taken by and under the aegis of uncertified inspectors, planners and officials even valid? Further, as the City Of Santa Cruz provides 30 days to file an appeal as to all 'non-technical' decisions and substantive adverse notices, why should the County only allow 14 days. As the County provides 30 days to appeal some matters [for instance see County Code §12.10.425- "Abatement of Structural and Geologic Hazards", 16.54.098 "Appeals and review of order" and others], why not appeals to the Building Code Board of Appeals? Could it really be that County wants to limit the number of 'valid' appeals since it would mean more money and less work for the County?

As this communication is getting over-long, I end with a question about why was the Department denying landowners their State mandated rights of appeal? Could it be that the County was taking in so much money by denying landowners the appeal rights required by the IBC that they have not wanted to shut off the flow of money into the Planning Department coffers? The effective date of AB 717 was January 1, 1996. If you were to request an audit of the amount of money the County has received over the time they have been denying landowners State Statute rights of appeal, you will likely learn the Department has [through their own clearly illegal conduct of refusing appeals and using non-certified employees to interpret, administer and enforce the ICC] taken in many hundreds of thousands of dollars. One must surely admit the illegal process has been a steady and large source of income for the County yet great heartache and expense for the landowner and those in the Building and Construction Professions and Industry.

Some have suspected the Department knew the wrongfulness of what they were doing yet continued doing it because of the amount of money they were bring in through the red tag process, penalties, fines and the 135\$ per hour charges was important to the Department. In fact there is a ordinance requiring the money received through code enforcement process be reserved first for payment of wages and costs of the unlicensed/uncertified Department's employees necessary to inspect, cite, enforce and adjudicate violations of a code as to which they are not trained to interpret, apply, enforce or adjudicate.

So much money is being taken in that the County recently enacted an ordinance that 'spills over' the excess money to the General Fund. At the meetings, and conferences in my matter, most always the County showed up with four (4) un-certified persons in attendance. That came to 540\$ per hour. This is a very illegal but very large income business activity. Has there been an 'unlawful' plan to extract money from landowners. Many are convinced the County has been ignoring not only 'landowner rights' but ignoring State Law. Some even go so far as to state the County has knowingly been violating State Law.

Thank you,

Joe Ritchey

David Lee

From: Tom Burns
Sent: Wednesday, May 06, 2009 8:49 AM
To: David Lee; Mark Deming
Subject: FW: appeal

fyi

Tom Burns
Planning Director
County of Santa Cruz

-----Original Message-----

From: Cove Britton [mailto:cove@matsonbritton.com]
Sent: Tuesday, May 05, 2009 7:12 PM
To: 'Michael Bethke'; danbronson@sbcglobal.net; 'Martha Fiorovich'; 'Richard Irish'; 'David Parks'
Cc: Tom Burns
Subject: appeal

Dear Local Appeals Board-

My appeal letter (see below) will be filed tomorrow morning assuming it is "accepted" by county staff. I will also pay an additional fee (besides the one already on file for this project) if required by staff.

Thank you for your consideration.

Sincerely-
Cove Britton
Architect

May 6, 2009

Local Appeals Board
County of Santa Cruz
701 Ocean Street
Santa Cruz, California 95060

RE: APN 043-105-12
423 Beach Drive

Dear members of the Local Appeals Board (as per 2007 CBC 108.8):

5/6/2009

15.c

I hereby appeal, under 108.8 of the 2007 CBC, the "Notice of Santa Cruz County Code Violation and Intention to Record Notice of Violation" issued by Senior Building Inspector S. Livingston on 4/30/09 (copy enclosed) and the Notice of Intent to Record (dated April 30, 2009) and signed by Maureen Hart.

"Notice of Santa Cruz County Code Violation and Intent to Record Notice of Violation"

1. 2007 CBC Section 108.9.2 #1 refers to State Housing Law and Health and Safety Code 17980 through 17995.5 to address the procedure for addressing code violations for housing. 2007 CBC Section 108.8 dictates the appeal process. The county notice(s) do not comply with the process dictated by 2007 CBC and California Health and Safety Code, specifically but not limited to:

a. Said notice states the Planning Director is the entity with whom to appeal to in regards to what is clearly a building standard and subject to appeal to the local appeals board under 2007 CBC Section 108.8.

b. It does not appear that the Planning Director is qualified to hear such an appeal

"18949.27 For purposes of this chapter, "building official" means the individual invested with the responsibility for overseeing local code enforcement activities, including administration of the building department, interpretation of code requirements, and direction of the code adoption process."

c. With all due respect to Mr. Livingston, please verify that Mr. Livingston is in c

Specifics of the "Violation"

2. Mr. Livingston notes under Violation Description(s) - "Work exceeding scope of pe

3. Mr. Livingston notes under Violation Description(s) - "Work in the existing non-c

Notice of Intent to Record

4. The "Notice of Intent to Record" dated April 30, 2009 and signed by Maureen Hart

5. The notice states "...I will inspect your property in approximately thirty (30) d

a. With all due respect to Maureen Hart, I request that it be verified that she is q

Government Code 54988

6. This code appears to be outside the scope of the boards' review, but may well be

"(2) In any city, county, or city and county, the legislative body may delegate the holding of the hearing required by paragraph (1) to a hearing board designated by the legislative body. The hearing board may be the housing appeals board established pursuant to Section 17920.5 of the Health and Safety Code or any other body designated by the legislative body. The hearing board shall make a written recommendation to the legislative body which shall include factual findings based on evidence introduced at the hearing. The legislative body may adopt the recommendation without further notice of hearing, or may set the matter for a de novo hearing before the legislative body. Notice in writing of the de novo hearing shall be provided to the property owner at least 10 days in advance of the

5/6/2009

15.c

scheduled hearing."

Please note that my appeal is based on the issues stated above but not necessarily I
I request that this appeal be processed as quickly as possible as at this time there
As a licensed Architect and a member of this community, the potential of significant

Sincerely,

Cove Britton
Architect

5/6/2009

15.c

Tom Burns

From: Marty Fiorovich [marty@fiorovichgroup.com]
Sent: Wednesday, May 06, 2009 5:57 PM
To: danbronson@sbcglobal.net
Cc: Cove Britton; Tom Burns; Michael Bethke; Michael Bethke; Richard Irish; David Parks
Subject: Re: Special Meeting / Distributed IAW Brwon Act / Public Record

My concerns are similar - that response to this requested appeal has not been addressed in a timely fashion, as well as that there was no mention in the minutes of the submission to the board.

I can attend a meeting next week.

Marty

On May 6, 2009, at 4:48 PM, dan bronson wrote:

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

Tom Burns

From: Cove Britton [cove@matsonbritton.com]
Sent: Wednesday, May 06, 2009 5:01 PM
To: 'Michael Bethke'; danbronson@sbcglobal.net; 'Martha Fiorovich'; 'Richard Irish'; 'David Parks'
Cc: Tom Burns
Subject: FW: mulcahy appeal



Mulcahy Appeal
05-06-09.pdf

Dear Members of the Board:

Attached is our appeal document with copies of the notices etc...and code sections for easier reference.

Regards-
Cove Britton
Architect

-----Original Message-----

From: Matson Britton Architects [mailto:info@matsonbritton.com]
Sent: Wednesday, May 06, 2009 4:37 PM
To: Cove@matsonbritton.com
Subject: mulcahy appeal

Cove,
Here is the Scan. Some of the pages are slightly cut off. I scanned it in twice trying to make them fit on the page, but for some reason they kept getting cut off. Let me know if you want me to try again.

Sam

Tom Burns

From: dan bronson [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

Tom Burns

From: Cove Britton [cove@matsonbritton.com]
Sent: Wednesday, May 06, 2009 3:36 PM
To: 'Richard Irish'; 'Michael Bethke'; danbronson@sbcglobal.net; 'Martha Fiorovich'; 'David Parks'
Cc: Tom Burns
Subject: Special Meeting

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

5/8/2009

15.g



May 6, 2009

Local Appeals Board
County of Santa Cruz
701 Ocean Street
Santa Cruz, California 95060

RE: APN 043-105-12
423 Beach Drive

Dear members of the Local Appeals Board (as per 2007 CBC 108.8):

I hereby appeal, under 108.8 of the 2007 CBC, the **"Notice of Santa Cruz County Code Violation and Intention to Record Notice of Violation"** issued by Senior Building Inspector S. Livingston on 4/30/09 (copy enclosed) and the **Notice of Intent to Record** (dated April 30, 2009) and signed by Maureen Hart.

"Notice of Santa Cruz County Code Violation and Intent to Record Notice of Violation"

1. 2007 CBC Section 108.9.2 #1 refers to State Housing Law and Health and Safety Code 17980 through 17995.5 to address the procedure for addressing code violations for housing. 2007 CBC Section 108.8 dictates the appeal process. The county notice(s) do not comply with the process dictated by 2007 CBC and California Health and Safety Code, specifically but not limited to:

a. Said notice states the Planning Director is the entity with whom to appeal to in regards to what is clearly a building standard and subject to appeal to the local appeals board under 2007 CBC Section 108.8.

b. It does not appear that the Planning Director is qualified to hear such an appeal (Health and Safety Code Section 18949.25-18949.31).

"18949.27 For purposes of this chapter, "building official" means the individual invested with the responsibility for overseeing local

728 NORTH
BRANCIORTE
SANTA CRUZ
CA 95062
877-877-3797

1

15.h

code enforcement activities, including administration of the building department, interpretation of code requirements, and direction of the code adoption process."

c. With all due respect to Mr. Livingston, please verify that Mr. Livingston is in conformance with Health and Safety Code Section 18949.25-18949.31 including the required continuing education.

Specifics of the "Violation"

2. Mr. Livingston notes under Violation Description(s) – *"Work exceeding scope of permit"*. I request that specifics are given of what work is being referred to.

3. Mr. Livingston notes under Violation Description(s) – *"Work in the existing non-conforming area exceeds the approved plan. See prior correction notice dated 3/13/09"*. Said correction notice (signed by Marty Heaney) states (in part) *"Please provide an approved revised plan to the areas that require replacement due to existing conditions, prior to progression inspections on these areas."* I request that specifics are given of what areas are being referred to. We are not aware of any walls that were removed "due to existing conditions". As such, there appears to be no need to supply additional information for walls removed. Please note that a change order was submitted on 5/4/09 but no work was proposed outside the original scope of work contained in the permitted plans.

Notice of Intent to Record

4. The "Notice of Intent to Record" dated April 30, 2009 and signed by Maureen Hart was also received by the property owner. This notice also violates state building code by suggesting an appeal process that is to the Planning Director.

5. The notice states "...I will inspect your property in approximately thirty (30) days to determine whether the violation(s) still exist(s).

a. With all due respect to Maureen Hart, I request that it be verified that she is qualified to inspect under 18949.25-18949.31.

Government Code 54988

6. This code appears to be outside the scope of the boards review, but may well be relevant and may be helpful to review. Possibly an appropriate recommendation to the Board of Supervisors is that your board becomes the delegated hearing body in regards to liens as indicated under 54988 (b):

"(2) In any city, county, or city and county, the legislative body may delegate the holding of the hearing required by paragraph (1) to a hearing board designated by the legislative body. The hearing

board may be the housing appeals board established pursuant to Section 17920.5 of the Health and Safety Code or any other body designated by the legislative body. The hearing board shall make a written recommendation to the legislative body which shall include factual findings based on evidence introduced at the hearing. The legislative body may adopt the recommendation without further notice of hearing, or may set the matter for a de novo hearing before the legislative body. Notice in writing of the de novo hearing shall be provided to the property owner at least 10 days in advance of the scheduled hearing."

Please note that my appeal is based on the issues stated above but not necessarily limited to said issues. Part of the problem that may have occurred on this project may be that Chapter 16 of the County Code may not be valid, in part due to a lack of justifiable and specific findings that led to the adoption of those ordinances. Please also note an appeal was filed on 8/15/2008 with an associated fee, to date that appeal has not been heard.

I request that this appeal be processed as quickly as possible as at this time there are individuals out of work due to the stop work notice. Please also note that my appeal is filed consistent with 2007 CBC 108.8 as I believe it is the state mandated appeal process, if county staff disagrees, please consider this an appeal of that "decision, order or determination".

As a licensed Architect and a member of this community, the potential of significant violation of codes, regulations, etc... regarding the construction of housing, by the very agency charged with enforcing those regulations, puts the life, safety, and welfare of the community as a whole at jeopardy. Thank you for the Boards' consideration.

Sincerely,

Cove Britton
Architect



Tom Burns

From: Cove Britton [cove@matsonbritton.com]
Sent: Thursday, May 07, 2009 11:15 PM
To: 'Cove Britton'; danbronson@sbcglobal.net; 'Michael Bethke'; 'Richard Irish'; 'Martha Fiorovich'; 'David Parks'
Cc: Tom Burns; Mark Deming; Christopher Cheleden; erik@zinngology.com; 'Elizabeth Mitchell'; 'Alexander, Kurtis'; Noel Smith
Subject: RE: Special Meeting / Distributed IAW Brown Act / Public Record

To Whom It May Concern:

It has just come to my attention that county staff may have been directing code that is pending (as noted on the county website) as current code (such as 12.12.060 as adopted in 4/20/76).

That very code is well within the appeals board to review (i.e. code amendments sent to the Building Standards Commission as part of the county's adoption of the 2007 CBC with amendments) without restriction, and within their authority to be considered invalid due to lack of specific and valid findings.

If Mr. Burns wishes to question 12.12.060, as shown as current code on the county web site...I suggest a thorough examination of the legitimacy of any recent changes to said ordinance and whether those changes were not made in a deliberately misleading way.

I have been very reticent to state that fraud has occurred, but it is becoming more evident that the question raised by Mr. Bronson may indeed have legitimate basis.

This is leading me to believe more and more that all amendments to the 2007 CBC, as presented to the Board of Supervisors by county staff, and delivered to the Building Standards Commission, may be in serious question. The question being - whether those materials are fraudulent in nature, and if so, represent a undeniable and legitimate threat to the health, safety, and welfare of this community...

Sincerely,
 Cove Britton
 Architect

From: Cove Britton [mailto:cove@matsonbritton.com]
Sent: Thursday, May 07, 2009 9:07 PM
To: 'danbronson@sbcglobal.net'; 'Michael Bethke'; 'Richard Irish'; 'Martha Fiorovich'; 'David Parks'
Cc: 'Tom Burns'; 'Mark Deming'; Christopher Cheleden; erik@zinngology.com; 'Elizabeth Mitchell'; 'Alexander, Kurtis'; Noel Smith (noel@cyber-times.com)
Subject: RE: Special Meeting / Distributed IAW Brown Act / Public Record

With all due respect to Mr. Burns:

Even county code (regardless of state code) dictates that the "Building Appeals Board" determines whether the appeal is properly presented.

This is more than obvious (see 12.12.060 below) and I can only assume that Mr. Burns is intentionally behaving improperly, and inclusive of prior conduct, maliciously (see below e-mail exchange dated April 22, 2009 as an example). I am disappointed by this outcome as I had high hopes for Mr. Burn's tenure as Planning Director.

12.12.060 Action on appeals by Building Appeals Board.

At the time set for the hearing, the Building Appeals Board shall review the relevant documents to determine whether the appellant has properly presented a matter for consideration by the Board. If the board determines that the request for hearing is proper, the Board shall proceed with the hearing and take such action on the appeal as it determines appropriate. The Board shall render a final decision on all appeals within 60 days of receiving the appeal. (Ord. 2281, 4/20/76)

Based on both state and county code, I will assume that my appeal hearing will be heard Wednesday at 7:00 in the Board of Supervisors Chambers (per vice-chair Dan Bronson's instruction) unless noticed by the Building Appeals Board otherwise. I am personally noticing interested parties, the media (as noted above), and will post the public notice personally.

Regards-
Cove Britton
Architect

From: "Tom Burns" <PLN001@co.santa-cruz.ca.us>
Date: May 7, 2009 11:07:08 AM PDT
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>
Subject: RE: Special Meeting / Distributed IAW Brown Act / Public Record

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

-----Original Message-----

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@slatcon.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

-----Original Message-----

From: Cove Britton [<mailto:cove@matsonbritton.com>]
Sent: Wednesday, April 22, 2009 4:07 PM
To: 'Tom Burns'
Subject: RE:

Tom:

Your version of what happened when you approached me following my appearance before the Board of Supervisors is not accurate. Your conduct was not appropriate, especially for a person who holds the public position that you do. Fortunately for me, others were present and observed the tone and content of what you said at that time.

I also disagree with your version of the history of the determination and publication of the fee schedules as well as my efforts to learn about that history.

What cannot be clearer is that I have been seeking by appropriate means information about the history of the determination and publication of the fee schedule, and will welcome any information that Mark or others at the Planning Department believe that they can provide with substantiation.

Sincerely,

Cove Britton
Architect

-----Original Message-----

From: Tom Burns [<mailto:PLN001@co.santa-cruz.ca.us>]
Sent: Wednesday, April 22, 2009 1:15 PM
To: cove@matsonbritton.com
Subject:

Hi Cove -- Well, it's been awhile since we've had one of our hot-headed discussions -- probably not particularly productive for

either of us. Let me more calmly try to communicate my concerns to you. I fully understand that you are frustrated with many things here. Apparently the latest has to do with appeal fees. What struck me as unfair today was how you could stand before the Board and make accusations that were so baseless. (By the way, I spoke with all three of the folks who you said were your source and all three strongly denied discussing those details with you, and one even said that they hadn't even talked with you.) So, it appears that you did your own research, never fact-checked your conclusion, and then you show up at the Board pronouncing what happened. As it turns out, your facts were totally wrong. Mark will follow up with you with the details, but in summary, we returned to the Board as directed during budget hearings. In fact, this topic was discussed by the Board three times over the course of six months. The Clerk's records will support that as well as the recordings of the meetings. Cove, I get that you are frustrated. And I get that other members of the public who attend oral communications are as well. The difference for you is that you want to be treated as an objective professional working in the field, and one who at times speaks on behalf of other professionals. As such, I would expect you to be more thoughtful in your criticisms of the department. Please don't get me wrong -- there are many legitimate areas to criticize us. But, while you may not like where the Board landed on the appeals fee issue, it was their decision made in full public view, not the fault of the department. Finally, I wanted to address your comment that it was unfair for me to confront you in the hallway on this issue. Just take a moment to contrast what I did in the hallway with what you did today at the Board and ask yourself which one seemed more unfair. We can disagree, but can't we do it respectfully and professionally? -- tom

Tom Burns
Planning Director
County of Santa Cruz

Tom Burns

From: Marty Fiorovich [marty@fiorovichgroup.com]
Sent: Thursday, May 07, 2009 10:33 PM
To: Richard Irish
Cc: danbronson@sbcglobal.net; Cove Britton; Tom Burns; Michael Bethke; Michael Bethke; David Parks
Subject: Re: Special Meeting / Distributed IAW Brwon Act / Public Record

I can make it Wednesday at 7:00.
Marty

On May 7, 2009, at 10:04 AM, Richard Irish wrote:

I am available any evening next week. Monday would be difficult but I can make that if needed.

Richard Irish, PE
Civil Engineer
303 Potrero Street, Suite 42-202
Santa Cruz, CA 95060
831.425.3901 ext 11
831.425.1522 fax

RI Engineering, Inc.
www.riengineering.com

Confidentiality Notice: This e-mail message, including any attachments, is for the sole use of the intended recipient(s) and may contain confidential and privileged information. Any unauthorized review, use, disclosure or distribution is prohibited. If you are not the intended recipient, please contact the sender by reply e-mail and destroy all copies of the original message.

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@slatcon.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

No virus found in this incoming message.
Checked by AVG - www.avg.com
Version: 8.5.325 / Virus Database: 270.12.21/2102 - Release Date: 05/07/09 05:57:00

Tom Burns

From: Cove Britton [cove@matsonbritton.com]
Sent: Thursday, May 07, 2009 9:07 PM
To: danbronson@sbcglobal.net; 'Michael Bethke'; 'Richard Irish'; 'Martha Fiorovich'; 'David Parks'
Cc: Tom Burns; Mark Deming; Christopher Cheleden; erik@zinngology.com; 'Elizabeth Mitchell'; 'Alexander, Kurtis'; Noel Smith
Subject: RE: Special Meeting / Distributed IAW Brown Act / Public Record

With all due respect to Mr. Burns:

Even county code (regardless of state code) dictates that the "Building Appeals Board" determines whether the appeal is properly presented.

This is more than obvious (see 12.12.060 below) and I can only assume that Mr. Burns is intentionally behaving improperly, and inclusive of prior conduct, maliciously (see below e-mail exchange dated April 22, 2009 as an example). I am disappointed by this outcome as I had high hopes for Mr. Burn's tenure as Planning Director.

12.12.060 Action on appeals by Building Appeals Board.

At the time set for the hearing, the Building Appeals Board shall review the relevant documents to determine whether the appellant has properly presented a matter for consideration by the Board. If the board determines that the request for hearing is proper, the Board shall proceed with the hearing and take such action on the appeal as it determines appropriate. The Board shall render a final decision on all appeals within 60 days of receiving the appeal. (Ord. 2281, 4/20/76)

Based on both state and county code, I will assume that my appeal hearing will be heard Wednesday at 7:00 in the Board of Supervisors Chambers (per vice-chair Dan Bronson's instruction) unless noticed by the Building Appeals Board otherwise. I am personally noticing interested parties, the media (as noted above), and will post the public notice personally.

Regards-
 Cove Britton
 Architect

From: "Tom Burns" <PLN001@co.santa-cruz.ca.us>
Date: May 7, 2009 11:07:08 AM PDT
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>
Subject: RE: Special Meeting / Distributed IAW Brown Act / Public Record

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

5/8/2009

15.K

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

-----Original Message-----

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 Brown 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 Board

--- 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@slatcon.com>, danbronson@sbeglobal.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

-----Original Message-----

From: Cove Britton [<mailto:cove@matsonbritton.com>]
Sent: Wednesday, April 22, 2009 4:07 PM
To: 'Tom Burns'
Subject: RE:

Tom:

Your version of what happened when you approached me following my appearance before the Board of Supervisors is not accurate. Your conduct was not appropriate, especially for a person who holds the public position that you do. Fortunately for me, others were

present and observed the tone and content of what you said at that time.

I also disagree with your version of the history of the determination and publication of the fee schedules as well as my efforts to learn about that history.

What cannot be clearer is that I have been seeking by appropriate means information about the history of the determination and publication of the fee schedule, and will welcome any information that Mark or others at the Planning Department believe that they can provide with substantiation.

Sincerely,

Cove Britton
Architect

-----Original Message-----

From: Tom Burns [<mailto:PLN001@co.santa-cruz.ca.us>]

Sent: Wednesday, April 22, 2009 1:15 PM

To: cove@matsonbritton.com

Subject:

Hi Cove -- Well, it's been awhile since we've had one of our hot-headed discussions -- probably not particularly productive for either of us. Let me more calmly try to communicate my concerns to you. I fully understand that you are frustrated with many things here. Apparently the latest has to do with appeal fees. What struck me as unfair today was how you could stand before the Board and make accusations that were so baseless. (By the way, I spoke with all three of the folks who you said were your source and all three strongly denied discussing those details with you, and one even said that they hadn't even talked with you.) So, it appears that you did your own research, never fact-checked your conclusion, and then you show up at the Board pronouncing what happened. As it turns out, your facts were totally wrong. Mark will follow up with you with the details, but in summary, we returned to the Board as directed during budget hearings. In fact, this topic was discussed by the Board three times over the course of six months. The Clerk's records will support that as well as the recordings of the meetings. Cove, I get that you are frustrated. And I get that other members of the public who attend oral communications are as well. The difference for you is that you want to be treated as an objective professional working in the field, and one who at times speaks on behalf of other professionals. As such, I would expect you to be more thoughtful in your criticisms of the department. Please don't get me wrong -- there are many legitimate areas to criticize us. But, while you may not like where the Board landed on the appeals fee issue, it was their decision made in full public view, not the fault of the department. Finally, I wanted to address your comment that it was unfair for me to confront you in the hallway on this issue. Just take a moment to contrast what I did in the hallway with what you did today at the Board and ask yourself which one seemed more unfair. We can disagree, but can't we do it respectfully and professionally? -- tom

Tom Burns

5/8/2009

15.K

Planning Director
County of Santa Cruz

5/8/2009

IS.K

Tom Burns

From: dan bronson [danbronson@sbcglobal.net]
Sent: Thursday, May 07, 2009 6:03 PM
To: Michael Bethke; Michael Bethke; Martha Fiorovich; Richard Irish; David Parks
Cc: Tom Burns; Cove Britton
Subject: Immediate Consideration of Appeal for Project at 423 Beach Dr

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

David Lee

From: Tom Burns
Sent: Thursday, May 07, 2009 11:07 AM
To: 'danbronson@sbcglobal.net'; Michael Bethke; Michael Bethke; Richard Irish; Martha Fiorovich; David Parks
Cc: David Lee; Mark Deming; Rahn Garcia
Subject: RE: Special Meeting / Distributed IAW Brown Act / Public Record

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

5/8/2009

15.m

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

-----Original Message-----

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 Brown 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 Board's pleasure to have the Hearing on Tuesday evening I shall show up.

Sincerely,
 Dan Bronson
 Member,
 Appeals Board

--- 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 043-105-12

5/8/2009

15.m

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

5/8/2009

15.m

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

5/8/2009

IS.m

Tom Burns

From: dan bronson [danbronson@sbcglobal.net]
Sent: Thursday, May 07, 2009 1:33 AM
To: Michael Bethke; Michael Bethke; Martha Fiorovich; Richard Irish; Tom Burns
Subject: Fw: Re: Special Meeting / Distributed IAW Brwon Act / Public Record

--- On Thu, 5/7/09, David Parks <parks.cal80@gmail.com> wrote:

From: David Parks <parks.cal80@gmail.com>
 Subject: Re: Special Meeting / Distributed IAW Brwon Act / Public Record
 To: danbronson@sbcglobal.net
 Date: Thursday, May 7, 2009, 1:13 AM

Dan - I am available for meetings any evening next week. I assume that the most recently adopted by-laws (sometime during the past 30 years) would be in force for such a meeting. Let me know. - Dave Parks

On Wed, May 6, 2009 at 4:48 PM, dan bronson <danbronson@sbcglobal.net> wrote:

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

Tom Burns

From: dan bronson [danbronson@sbcglobal.net]
Sent: Friday, May 08, 2009 4:05 PM
To: Michael Bethke; Michael Bethke; Martha Fiorovich; Richard Irish; David Parks
Cc: Tom Burns; Lori Darnley; Jennifer Hutchinson; David Lee; Cove Britton
Subject: Calling BAFCAB Special Meeting for 5/13/09 at 7pm

In accordance with the Santa Cruz County Code
I am calling a Special Meeting of the Building, Accessibility and Fire Code Appeals Board
for an Appeals Hearing for the project located at 423 Beach Dr, Aptos.

Due to the failure of the Secretary of the Board to properly notify the Board and set a date & time for a meeting within 30 days of the filing of this appeal this matter is now an urgency item for the immediate consideration of this Board.

I have attempted to contact the Chairperson of the Board yesterday and today at various telephone numbers and left a message and have not had a reply from him.

This message requires the Secretary of the Board to issue a Public Notice of the meeting with an Agenda immediately. The only item to be on the agenda shall be the Appeal named above.

If the Secretary fails to issue the Public Notice the Board Members will see that the required Public Notice is issued.

This message requires the Secretary to make the reservation for the Board of Supervisors Chambers for 5/13/09 from 7pm to 10pm.

For cause these duties may be removed from the Secretary by a vote of the Board if necessary.

Sincerely,
Dan Bronson

Tom Burns

From: marty [marty@fiorovichgroup.com]
Sent: Friday, May 08, 2009 9:27 AM
To: Michael Bethke
Cc: 'Cove Britton'; danbronson@sbcglobal.net; 'Richard Irish'; 'David Parks'; Tom Burns; Mark Deming; Christopher Cheleden; erik@zinngology.com; 'Elizabeth Mitchell'; 'Alexander, Kurtis'; 'Noel Smith'
Subject: Re: Special Meeting / Distributed IAW Brown Act / Public Record

My concern is that not hearing this is a violation of our responsibility under state law in the rights of the appellant.

Marty

On May 8, 2009, at 8:08 AM, Michael Bethke wrote:

ATTN: TO ALL PARTIES CONCERNED

WITH ALL DUE RESPECT TO ALL PARTIES CONCERNED, I AM RESPECTFULLY REQUESTING THAT THESE E-MAIL COMMUNICATIONS CEASE IMMEDIATELY. THERE WILL BE A PROPER PROCESS AND PROCEDURE TO ADDRESS AND RESOLVE THESE MATTERS IN DUE TIME, SO I STRONGLY URGE ALL PARTIES TO EXERCISE PATIENCE, PROFESSIONALISM AND RESTRAINT.

THANK YOU!

Michael D. Bethke, AICP
Chairman, Building, Accessibility & Fire Code Appeals Board

From: Cove Britton [mailto:cove@matsonbritton.com]
Sent: Thursday, May 07, 2009 11:15 PM
To: 'Cove Britton'; danbronson@sbcglobal.net; 'Michael Bethke'; 'Richard Irish'; 'Martha Fiorovich'; 'David Parks'
Cc: 'Tom Burns'; 'Mark Deming'; Christopher Cheleden; erik@zinngology.com; 'Elizabeth Mitchell'; 'Alexander, Kurtis'; Noel Smith
Subject: RE: Special Meeting / Distributed IAW Brown Act / Public Record

To Whom It May Concern:

It has just come to my attention that county staff may have been directing code that is pending (as noted on the county website) as current code (such as 12.12.060 as adopted in 4/20/76).

That very code is well within the appeals board to review (i.e. code amendments sent to the Building Standards Commission as part of the county's adoption of the 2007 CBC with amendments) without restriction, and within their authority to be considered invalid due to lack of specific and valid findings.

If Mr. Burns wishes to question 12.12.060, as shown as current code on the county web site...I suggest a thorough examination of the legitimacy of any recent changes to said ordinance and whether those changes were not made in a deliberately misleading way.

I have been very reticent to state that fraud has occurred, but it is becoming more evident that the question raised by Mr. Bronson may indeed have legitimate basis.

This is leading me to believe more and more that all amendments to the 2007 CBC, as presented to the Board of Supervisors by county staff, and delivered to the Building Standards Commission, may be in serious question. The question being - whether those materials are fraudulent in nature, and if so, represent a undeniable and legitimate threat to the health, safety, and welfare of this community...

Sincerely,
Cove Britton
Architect

From: Cove Britton [mailto:cove@matsonbritton.com]
Sent: Thursday, May 07, 2009 9:07 PM
To: 'danbronson@sbcglobal.net'; 'Michael Bethke'; 'Richard Irish'; 'Martha Fiorovich'; 'David Parks'
Cc: 'Tom Burns'; 'Mark Deming'; Christopher Cheleden; 'erik@zinngology.com'; 'Elizabeth Mitchell'; 'Alexander, Kurtis'; Noel Smith (noel@cyber-times.com)
Subject: RE: Special Meeting / Distributed IAW Brown Act / Public Record

With all due respect to Mr. Burns:

Even county code (regardless of state code) dictates that the "Building Appeals Board" determines whether the appeal is properly presented.

This is more than obvious (see 12.12.060 below) and I can only assume that Mr. Burns is intentionally behaving improperly, and inclusive of prior conduct, maliciously (see below e-mail exchange dated April 22, 2009 as an example). I am disappointed by this outcome as I had high hopes for Mr. Burn's tenure as Planning Director.

12.12.060 Action on appeals by Building Appeals Board.

At the time set for the hearing, the Building Appeals Board shall review the relevant documents to determine whether the appellant has properly presented a matter for consideration by the Board. If the board determines that the request for hearing is proper, the Board shall proceed with the hearing and take such action on the appeal as it determines appropriate. The Board shall render a final decision on all appeals within 60 days of receiving the appeal. (Ord. 2281, 4/20/76)

Based on both state and county code, I will assume that my appeal hearing will be heard Wednesday at 7:00 in the Board of Supervisors Chambers (per vice-chair Dan Bronson's instruction) unless noticed by the Building Appeals Board otherwise. I am personally noticing interested parties, the media (as noted above), and will post the public notice personally.

Regards-

Cove Britton
Architect

From: "Tom Burns" <PLN001@co.santa-cruz.ca.us>
Date: May 7, 2009 11:07:08 AM PDT
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>
Subject: RE: Special Meeting / Distributed IAW Brown Act / Public Record

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

-----Original Message-----

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 Brown 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 Board

--- 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

-----Original Message-----

From: Cove Britton [<mailto:cove@matsonbritton.com>]
Sent: Wednesday, April 22, 2009 4:07 PM
To: 'Tom Burns'
Subject: RE:

Tom:

Your version of what happened when you approached me following my appearance before the Board of Supervisors is not accurate. Your conduct was not appropriate, especially for a person who holds the public position that you do. Fortunately for me, others were present and observed the tone and content of what you said at that time.

I also disagree with your version of the history of the determination and publication of the fee schedules as well as my efforts to learn about that history.

What cannot be clearer is that I have been seeking by appropriate means information about the history of the determination and publication of the fee schedule, and will welcome any information that Mark or others at the Planning Department believe that they can provide with substantiation.

Sincerely,

Cove Britton
Architect

-----Original Message-----

From: Tom Burns [<mailto:PLN001@co.santa-cruz.ca.us>]
Sent: Wednesday, April 22, 2009 1:15 PM
To: cove@matsonbritton.com
Subject:

Hi Cove -- Well, it's been awhile since we've had one of our hot-headed discussions -- probably not particularly productive for either of us. Let me more calmly try to communicate my concerns to you. I fully understand that you are frustrated with many things here. Apparently the latest has to do with appeal fees. What struck me as unfair today was how you could stand before the Board and make accusations that were so baseless. (By the way, I spoke with all three of the folks who you said were your source and all three strongly denied discussing those details with you, and one even said that they hadn't even talked with you.) So, it appears that you did your own research, never fact-checked your conclusion, and then you show up at the Board pronouncing what happened. As it turns out, your facts were totally wrong. Mark will follow up with you with the details, but in summary, we returned to the Board as directed during budget hearings. In fact, this topic was discussed by the Board three times over the course of six months. The Clerk's records will support that as well as the recordings of the meetings. Cove, I get that you are frustrated. And I get that other members of the public who attend oral communications are as well. The difference for you is that you want to be treated as an objective professional working in the field, and one who at times speaks on behalf of other professionals. As such, I would expect you to be more thoughtful in your criticisms of the department. Please don't get me wrong - there are many legitimate areas to criticize us. But, while you may not like where the Board landed on the appeals fee issue, it was their decision made in full public view, not the fault of the department. Finally, I wanted to address your comment that it was unfair for me to confront you in the hallway on this issue. Just take a moment to contrast what I did in the hallway with what you did today at the Board and ask yourself which one seemed more unfair. We can disagree, but can't we do it respectfully and professionally? -- tom

Tom Burns
Planning Director
County of Santa Cruz

Tom Burns

From: Cove Britton [cove@matsonbritton.com]
Sent: Friday, May 08, 2009 8:49 AM
To: 'Michael Bethke'; danbronson@sbcglobal.net; 'Richard Irish'; 'Martha Fiorovich'; 'David Parks'
Cc: Tom Burns; Mark Deming; Christopher Cheleden; erik@zinngology.com; 'Elizabeth Mitchell'; 'Alexander, Kurtis'; 'Noel Smith'; 'Gerald V Barron'
Subject: RE: Special Meeting / Distributed IAW Brown Act / Public Record

With all due respect to Mr. Bethke-

It is my understanding that all 5 members of the Appeals Board of indicated that a special meeting is to occur next week on my appeal, Mr. Bronson specified a time and place that is consistent with at least four of the members requirements.

I suggest it may be a misdemeanor violation of the Brown Act to not hold the hearing now that it has been called. Regardless, proper process and procedure is the issue and I believe public discourse on just that is justified, especially in light of Mr. Burn's missive and Mr. Bronson's response.

Again, with all due respect, this issue is time sensitive and the time is past due.

Cove Britton
Architect

From: Michael Bethke [mailto:michael@slattcon.com]
Sent: Friday, May 08, 2009 8:08 AM
To: 'Cove Britton'; danbronson@sbcglobal.net; 'Richard Irish'; 'Martha Fiorovich'; 'David Parks'
Cc: 'Tom Burns'; 'Mark Deming'; 'Christopher Cheleden'; erik@zinngology.com; 'Elizabeth Mitchell'; 'Alexander, Kurtis'; 'Noel Smith'
Subject: RE: Special Meeting / Distributed IAW Brown Act / Public Record

ATTN: TO ALL PARTIES CONCERNED

WITH ALL DUE RESPECT TO ALL PARTIES CONCERNED, I AM RESPECTFULLY REQUESTING THAT THESE E-MAIL COMMUNICATIONS CEASE IMMEDIATELY. THERE WILL BE A PROPER PROCESS AND PROCEDURE TO ADDRESS AND RESOLVE THESE MATTERS IN DUE TIME, SO I STRONGLY URGE ALL PARTIES TO EXERCISE PATIENCE, PROFESSIONALISM AND RESTRAINT.

THANK YOU!

Michael D. Bethke, AICP
Chairman, Building, Accessibility & Fire Code Appeals Board

From: Cove Britton [mailto:cove@matsonbritton.com]

5/8/2009

15.g

Sent: Thursday, May 07, 2009 11:15 PM

To: 'Cove Britton'; danbronson@sbcglobal.net; 'Michael Bethke'; 'Richard Irish'; 'Martha Fiorovich'; 'David Parks'

Cc: 'Tom Burns'; 'Mark Deming'; Christopher Cheleden; erik@zinngology.com; 'Elizabeth Mitchell'; 'Alexander, Kurtis'; Noel Smith

Subject: RE: Special Meeting / Distributed IAW Brown Act / Public Record

To Whom It May Concern:

It has just come to my attention that county staff may have been directing code that is pending (as noted on the county website) as current code (such as 12.12.060 as adopted in 4/20/76).

That very code is well within the appeals board to review (i.e. code amendments sent to the Building Standards Commission as part of the county's adoption of the 2007 CBC with amendments) without restriction, and within their authority to be considered invalid due to lack of specific and valid findings.

If Mr. Burns wishes to question 12.12.060, as shown as current code on the county web site...I suggest a thorough examination of the legitimacy of any recent changes to said ordinance and whether those changes were not made in a deliberately misleading way.

I have been very reticent to state that fraud has occurred, but it is becoming more evident that the question raised by Mr. Bronson may indeed have legitimate basis.

This is leading me to believe more and more that all amendments to the 2007 CBC, as presented to the Board of Supervisors by county staff, and delivered to the Building Standards Commission, may be in serious question. The question being - whether those materials are fraudulent in nature, and if so, represent a undeniable and legitimate threat to the health, safety, and welfare of this community...

Sincerely,
Cove Britton
Architect

From: Cove Britton [mailto:cove@matsonbritton.com]

Sent: Thursday, May 07, 2009 9:07 PM

To: 'danbronson@sbcglobal.net'; 'Michael Bethke'; 'Richard Irish'; 'Martha Fiorovich'; 'David Parks'

Cc: 'Tom Burns'; 'Mark Deming'; Christopher Cheleden; 'erik@zinngology.com'; 'Elizabeth Mitchell'; 'Alexander, Kurtis'; Noel Smith (noel@cyber-times.com)

Subject: RE: Special Meeting / Distributed IAW Brown Act / Public Record

With all due respect to Mr. Burns:

Even county code (regardless of state code) dictates that the "Building Appeals Board" determines whether the appeal is properly presented.

This is more than obvious (see 12.12.060 below) and I can only assume that Mr. Burns is intentionally behaving improperly, and inclusive of prior conduct, maliciously (see below e-mail exchange dated April 22, 2009 as an example). I am disappointed by this outcome as I had high hopes for Mr. Burn's tenure as Planning Director.

12.12.060 Action on appeals by Building Appeals Board.

At the time set for the hearing, the Building Appeals Board shall review the relevant documents to determine whether the appellant has properly presented a matter for consideration by the Board. If the board determines that the request for hearing is proper, the Board shall proceed with the hearing and take such action on the appeal as it determines appropriate. The Board shall render a final decision on

5/8/2009

15.8

all appeals within 60 days of receiving the appeal. (Ord. 2281, 4/20/76)

Based on both state and county code, I will assume that my appeal hearing will be heard Wednesday at 7:00 in the Board of Supervisors Chambers (per vice-chair Dan Bronson's instruction) unless noticed by the Building Appeals Board otherwise. I am personally noticing interested parties, the media (as noted above), and will post the public notice personally.

Regards-
Cove Britton
Architect

From: "Tom Burns" <PLN001@co.santa-cruz.ca.us>
Date: May 7, 2009 11:07:08 AM PDT
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" <csi021@co.santa-cruz.ca.us>
Subject: RE: Special Meeting / Distributed IAW Brown Act / Public Record

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

5/8/2009

15g

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

-----Original Message-----

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 Florovich; 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

-----Original Message-----

From: Cove Britton [mailto:cove@matsonbritton.com]
Sent: Wednesday, April 22, 2009 4:07 PM
To: 'Tom Burns'
Subject: RE:

Tom:

Your version of what happened when you approached me following my appearance before the Board of Supervisors is not accurate. Your conduct was not appropriate, especially for a person who holds the public position that you do. Fortunately for me, others were present and observed the tone and content of what you said at that time.

I also disagree with your version of the history of the determination and publication of the fee schedules as well as my efforts to learn about that history.

What cannot be clearer is that I have been seeking by appropriate means information about the history of the determination and publication of the fee schedule, and will welcome any information that Mark or others at the Planning Department believe that they can provide with substantiation.

Sincerely,

Cove Britton
Architect

-----Original Message-----

From: Tom Burns [mailto:PLN001@co.santa-cruz.ca.us]
Sent: Wednesday, April 22, 2009 1:15 PM
To: cove@matsonbritton.com
Subject:

Hi Cove -- Well, it's been awhile since we've had one of our hot-headed discussions -- probably not particularly productive for either of us. Let me more calmly try to communicate my concerns to you. I fully understand that you are frustrated with many things here. Apparently the latest has to do with appeal fees. What struck me as unfair today was how you could stand before the Board and make accusations that were so baseless. (By the way, I spoke with all three of the folks who you said were your source and all three strongly denied discussing those details with you, and one

5/8/2009

15.9

even said that they hadn't even talked with you.) So, it appears that you did your own research, never fact-checked your conclusion, and then you show up at the Board pronouncing what happened. As it turns out, your facts were totally wrong. Mark will follow up with you with the details, but in summary, we returned to the Board as directed during budget hearings. In fact, this topic was discussed by the Board three times over the course of six months. The Clerk's records will support that as well as the recordings of the meetings. Cove, I get that you are frustrated. And I get that other members of the public who attend oral communications are as well. The difference for you is that you want to be treated as an objective professional working in the field, and one who at times speaks on behalf of other professionals. As such, I would expect you to be more thoughtful in your criticisms of the department. Please don't get me wrong -- there are many legitimate areas to criticize us. But, while you may not like where the Board landed on the appeals fee issue, it was their decision made in full public view, not the fault of the department. Finally, I wanted to address your comment that it was unfair for me to confront you in the hallway on this issue. Just take a moment to contrast what I did in the hallway with what you did today at the Board and ask yourself which one seemed more unfair. We can disagree, but can't we do it respectfully and professionally? -- tom

Tom Burns
Planning Director
County of Santa Cruz

5/8/2009

15.9

Tom Burns

From: Michael Bethke [michael@slattcon.com]
Sent: Friday, May 08, 2009 8:08 AM
To: 'Cove Britton'; danbronson@sbcglobal.net; 'Richard Irish'; 'Martha Fiorovich'; 'David Parks'
Cc: Tom Burns; Mark Deming; Christopher Cheleden; erik@zinngology.com; 'Elizabeth Mitchell'; 'Alexander, Kurtis'; 'Noel Smith'
Subject: RE: Special Meeting / Distributed IAW Brown Act / Public Record

ATTN: TO ALL PARTIES CONCERNED

WITH ALL DUE RESPECT TO ALL PARTIES CONCERNED, I AM RESPECTFULLY REQUESTING THAT THESE E-MAIL COMMUNICATIONS CEASE IMMEDIATELY. THERE WILL BE A PROPER PROCESS AND PROCEDURE TO ADDRESS AND RESOLVE THESE MATTERS IN DUE TIME, SO I STRONGLY URGE ALL PARTIES TO EXERCISE PATIENCE, PROFESSIONALISM AND RESTRAINT.

THANK YOU!

Michael D. Bethke, AICP
Chairman, Building, Accessibility & Fire Code Appeals Board

From: Cove Britton [mailto:cove@matsonbritton.com]
Sent: Thursday, May 07, 2009 11:15 PM
To: 'Cove Britton'; danbronson@sbcglobal.net; 'Michael Bethke'; 'Richard Irish'; 'Martha Fiorovich'; 'David Parks'
Cc: 'Tom Burns'; 'Mark Deming'; Christopher Cheleden; erik@zinngology.com; 'Elizabeth Mitchell'; 'Alexander, Kurtis'; Noel Smith
Subject: RE: Special Meeting / Distributed IAW Brown Act / Public Record

To Whom It May Concern:

It has just come to my attention that county staff may have been directing code that is pending (as noted on the county website) as current code (such as 12.12.060 as adopted in 4/20/76).

That very code is well within the appeals board to review (i.e. code amendments sent to the Building Standards Commission as part of the county's adoption of the 2007 CBC with amendments) without restriction, and within their authority to be considered invalid due to lack of specific and valid findings.

If Mr. Burns wishes to question 12.12.060, as shown as current code on the county web site...I suggest a thorough examination of the legitimacy of any recent changes to said ordinance and whether those changes were not made in a deliberately misleading way.

I have been very reticent to state that fraud has occurred, but it is becoming more evident that the question raised by Mr. Bronson may indeed have legitimate basis.

This is leading me to believe more and more that all amendments to the 2007 CBC, as presented to the Board of Supervisors by county staff, and delivered to the Building Standards Commission, may be in serious question. The question being - whether those materials are fraudulent in nature, and if so, represent a undeniable and legitimate threat to the health, safety, and welfare of this community...

Sincerely,
Cove Britton
Architect

5/8/2009

IS.r

From: Cove Britton [mailto:cove@matsonbritton.com]
Sent: Thursday, May 07, 2009 9:07 PM
To: 'danbronson@sbcglobal.net'; 'Michael Bethke'; 'Richard Irish'; 'Martha Fiorovich'; 'David Parks'
Cc: 'Tom Burns'; 'Mark Deming'; Christopher Cheleden; 'erik@zinngology.com'; 'Elizabeth Mitchell'; 'Alexander, Kurtis'; Noel Smith (noel@cyber-times.com)
Subject: RE: Special Meeting / Distributed IAW Brown Act / Public Record

With all due respect to Mr. Burns:

Even county code (regardless of state code) dictates that the "Building Appeals Board" determines whether the appeal is properly presented.

This is more than obvious (see 12.12.060 below) and I can only assume that Mr. Burns is intentionally behaving improperly, and inclusive of prior conduct, maliciously (see below e-mail exchange dated April 22, 2009 as an example). I am disappointed by this outcome as I had high hopes for Mr. Burn's tenure as Planning Director.

12.12.060 Action on appeals by Building Appeals Board.

At the time set for the hearing, the Building Appeals Board shall review the relevant documents to determine whether the appellant has properly presented a matter for consideration by the Board. If the board determines that the request for hearing is proper, the Board shall proceed with the hearing and take such action on the appeal as it determines appropriate. The Board shall render a final decision on all appeals within 60 days of receiving the appeal. (Ord. 2281, 4/20/76)

Based on both state and county code, I will assume that my appeal hearing will be heard Wednesday at 7:00 in the Board of Supervisors Chambers (per vice-chair Dan Bronson's instruction) unless noticed by the Building Appeals Board otherwise. I am personally noticing interested parties, the media (as noted above), and will post the public notice personally.

Regards-
 Cove Britton
 Architect

From: "Tom Burns" <PLN001@co.santa-cruz.ca.us>
Date: May 7, 2009 11:07:08 AM PDT
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" <csi021@co.santa-cruz.ca.us>
Subject: RE: Special Meeting / Distributed IAW Brown Act / Public Record

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 its 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

-----Original Message-----

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 Brown Act / Public Record

5/8/2009

15.r

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

-----Original Message-----

From: Cove Britton [<mailto:cove@matsonbritton.com>]
Sent: Wednesday, April 22, 2009 4:07 PM
To: 'Tom Burns'
Subject: RE:

Tom:

Your version of what happened when you approached me following my appearance before the Board of Supervisors is not accurate. Your conduct was not appropriate, especially for a person who holds the public position that you do. Fortunately for me, others were present and observed the tone and content of what you said at that time.

I also disagree with your version of the history of the determination and publication of the fee schedules as well as my

efforts to learn about that history.

What cannot be clearer is that I have been seeking by appropriate means information about the history of the determination and publication of the fee schedule, and will welcome any information that Mark or others at the Planning Department believe that they can provide with substantiation.

Sincerely,

Cove Britton
Architect

-----Original Message-----

From: Tom Burns [mailto:PLN001@co.santa-cruz.ca.us]

Sent: Wednesday, April 22, 2009 1:15 PM

To: cove@matsonbritton.com

Subject:

Hi Cove -- Well, it's been awhile since we've had one of our hot-headed discussions -- probably not particularly productive for either of us. Let me more calmly try to communicate my concerns to you. I fully understand that you are frustrated with many things here. Apparently the latest has to do with appeal fees. What struck me as unfair today was how you could stand before the Board and make accusations that were so baseless. (By the way, I spoke with all three of the folks who you said were your source and all three strongly denied discussing those details with you, and one even said that they hadn't even talked with you.) So, it appears that you did your own research, never fact-checked your conclusion, and then you show up at the Board pronouncing what happened. As it turns out, your facts were totally wrong. Mark will follow up with you with the details, but in summary, we returned to the Board as directed during budget hearings. In fact, this topic was discussed by the Board three times over the course of six months. The Clerk's records will support that as well as the recordings of the meetings. Cove, I get that you are frustrated. And I get that other members of the public who attend oral communications are as well. The difference for you is that you want to be treated as an objective professional working in the field, and one who at times speaks on behalf of other professionals. As such, I would expect you to be more thoughtful in your criticisms of the department. Please don't get me wrong -- there are many legitimate areas to criticize us. But, while you may not like where the Board landed on the appeals fee issue, it was their decision made in full public view, not the fault of the department. Finally, I wanted to address your comment that it was unfair for me to confront you in the hallway on this issue. Just take a moment to contrast what I did in the hallway with what you did today at the Board and ask yourself which one seemed more unfair. We can disagree, but can't we do it respectfully and professionally? -- tom

Tom Burns
Planning Director
County of Santa Cruz

5/8/2009

15.r



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
TOM BURNS, PLANNING DIRECTOR

May 11, 2009

Mr. Cove Britton
Matson Britton Architects
728 North Branciforte
Santa Cruz, CA 95062

**SUBJECT: APN 043-105-12
423 Beach Drive**

Dear Cove:

On May 6, 2009, you filed an appeal to the "Local Appeals Board" of the posting of a Notice of Santa Cruz County Violation and Intention to Record Notice of Violation. These postings occurred on April 30, 2009.

However, the "Local Appeals Board" is not the appropriate venue for this appeal. Instead, this "appeal" is actually a request for a protest hearing on the Notice of Violation, pursuant to County Code Section 19.01.070. Accordingly, this protest has been referred to the Planning Director for scheduling and a refund of your appeal fees has been authorized. The accompanying letter provides you with information regarding this protest hearing process.

If you have any questions regarding this matter, please feel free to contact me.

Sincerely,


Mark M. Deming, AICP
Assistant Planning Director

cc: Building, Accessibility and Fire Code Appeals Board

David Lee

From: dan bronson [danbronson@sbcglobal.net]
Sent: Saturday, May 09, 2009 4:09 PM
To: Michael Bethke; Michael Bethke; Martha Fiorovich; Richard Irish; David Parks; Tom Burns; Cove Britton
Cc: David Lee; Jennifer Hutchinson
Subject: Re Appeals Hearings / SCC BAFCAB / FOR THE PUBLIC RECORD

Transmitted Saturday, May 9, 2009

FOR THE PUBLIC RECORD

Distributed In Accordance with the Ralph Brown Act

To:
 Members of the Building, Accessibility and Fire Code Appeals Board
 Secretary to the BAF Appeals Board
 Planning Department & Building Division Staff
 Appellant(s) and/or Appellants Agent

From:
 Daniel Bronson, Vice-Chair, BAFCAB

1. Absent an opportunity so far for our Board to adopt policies and procedures
2. and absent any communication, save one, from the Chairperson of the Appeals Board
3. and given the **Urgent nature of the Special Meeting for the Appeal Hearing for 423 Beach Dr. on Wednesday May 13th 2009;**

To All Parties to this Communication

I offer the following information for your consideration.

These are my opinions based on my knowledge from law and justice college coursework; extensive recent study of California legal codes; the California Building Standards Codes; and California Local Appeals Boards; and higher court opinions regarding appeals processes and review of federal and state administrative appeals procedures over the past six months.

1. Admissibility

Accepted legal appeals processes generally allows admission only of recognized documents of the previously established record. In other words in most cases that are the same as *the decision that is being appealed from took into consideration when it was made.*

The submission of new documents, arguments or subjects is generally not allowed. Any party to an appeal may challenge the admission of evidence on this basis.

This is to ensure that documentary evidence is valid and of manageable scope and not endless or newly created.

Secondarily this reduces the burden on local government to simply photocopying a file and mailing out the copies with a cover letter.

This also helps ensure that the Appeals Board members will consider only the pre-existing records and receive them properly in advance of the Appeals Hearing to review.

Concealment of documents or other information or evidence that may bear on the original decision or might affect the final determination of the Appeals Board may be prejudicial to either party.

5/11/2009

15.1

2. Purpose of the Appeal Hearing

This is a formal appeal process of a quasi-judicial nature under California laws and Regulations and county Ordinances; not simply a staff review or an informal "administrative appeal".

3. Process

We will be considering

- the validity of the appeal
- reasonable application of laws and regulations
- and then finally making a determination of the legal correctness and reasonableness of the decision(s) or requirement(s) made by official(s).

4. Attorneys

At an Appeals Hearing any parties may have an attorney(s) present for advice or to represent them. They also may have advisors present to assist them and answer questions but not to represent them unless unusual circumstances provide a reasonable necessity for this.

5. Witnesses & Experts

Any party to the Appeal may reasonably have witnesses especially knowledgeable of the Appealed decision or requirement, the project affected or as subject matter experts with technical subject matter qualifications. Any party to the Appeal may challenge the qualifications of anyone identified as a witness or expert.

Note to Parties to the Appeal Hearing

Please have made sure that your complete information is delivered to all members of the Appeals Board not later than 5pm, Tuesday, May 12th 2009.

I hope this information is helpful to all parties and the general public as well.

Sincerely,

Dan Bronson

Member, BAF CAB

5/11/2009

15.4

PIERCE & SHEARER LLP

April 30, 2009

Santa Cruz County Building & Housing Appeals Board
✓ Jennifer Hutchinson, Secretary
Mike Bethke, Chairperson
Martha Fiorovich, Board Member
Richard Irish, Board Member
David Parks, Board Member
Dan Bronson, Board Member

Kathleen Salazar
Ken Hart
Tom Burns
Kevin Fitzpatrick

Re: NOTICE OF APPEAL OF ANTOINETTE JARDINE TO BUILDING AND HOUSING APPEALS BOARD

Dear Appeals Board Members:

I, Antoinette Jardine, hereby appeal the following actions, decisions and orders of the County of Santa Cruz (the "County"):

- (1) Notice of Violation, signed by Code Compliance Investigator Kathleen Salazar, dated July 30, 2007;
- (2) Denial of Permit Application 65067H by Ken Hart on January 16, 2008;
- (3) Denial of Appeal re Permit Application 65067H by Tom Burns on February 20, 2008;
- (4) Decision and Order, dated April 9, 2008;
- (5) Denial of Request for As-Built Permits, 2008
- (6) Denial of Request for Variance Forms and Procedures, 2009

The above actions, decisions and orders (collectively, "Appealed Actions") all involve the County's attempt to prevent me from residing in my home where I have lived for almost ten years and where previous occupants resided since the early 1900's. I ask that the Board find that my property either conforms with applicable land use regulations or is a legal non-conforming, pre-existing use allowed to continue under state law, or that the County violated a host of state laws, thereby rendering its actions null and void. In the alternative, even if County officials had complied with state law (they did not) and even if the land use laws did not automatically permit

me to continue residing in my home (which they do), I ask that the Board grant a variance or defer the enforcement of any order to allow me to continue residing in my home. Without such relief, I face the very real prospect of becoming homeless. I am requesting that my appeal be calendared for hearing as soon as possible and prior to August 2009.

A. Jurisdiction of the Building and Housing Board of Appeals

The Building and Housing Appeals has jurisdiction over the Appealed Action. directly relate to county requirements relating to the use, maintenance and/or change of occupancy of a dwelling, building or accessory structure, as provided by Health & Safety Code § 17920.6. That section provides that the "housing appeals board" has authority "to hear appeals regarding the requirements of the city or county relating to the use, maintenance, and change of occupancy of ... dwellings, or portions thereof, and buildings and structures accessory thereto, including requirements governing alteration, additions, repair, demolition, and moving of such buildings[.]" It further states: "In any area in which there is not such a board or agency, 'housing appeals board' means the local appeals board having jurisdiction over such area."

Health & Safety Code § 17920.5 defines "local appeals board" has authority "to hear appeals regarding the building requirements of the city or county." It further states, "In any area in which there is no such board or agency, 'local appeals board' means the governing body of the city or county having jurisdiction over such area."

In addition, the Housing Appeals Board has the authority to grant variances from local zoning requirements. Section 17959.5 states: "The housing appeals board may, upon appeal or upon application by the owner, grant variances from local use zone requirements in order to permit an owner-occupant of a dwelling to construct an addition to a dwelling to meet occupancy standards relating the number of persons in a household to the number of rooms or bedrooms."

Moreover, the Housing Appeals Board may defer orders of abatement in cases of extreme hardship, as is the case here. Section 17959.4 provides that the "appeals board may, in cases of extreme hardship to owner-occupants or tenants of dwellings, provide for deferral of the effective date of orders of abatement."

Section 108.8.1 of the California Building Code provides, "Every city, county or city and county shall establish a local appeals board and a housing appeals board." Section 108.8.3 provides that any person "adversely affected by a decision, order or determination" relating to "building standards," or "any lawfully enacted ordinance by a city, county or city and county, may appeal the issues for resolution the local appeals board or housing board as appropriate."

This Notice of Appeal is timely because the Appeals Board has recently convened for the first time in April 2009 and that after an absence of approximately thirty years, the Appeals Board and process is only now available to me. The County never informed me of my right to appeal to the Housing Appeals Board. In fact, the County Code Enforcement Officer, Kevin Fitzpatrick, told me the exact opposite. He said I had no right to appeal to the Housing Appeals Board.

If there is any question about the jurisdiction to hear this appeal, I respectfully request the opportunity to present oral argument on this issue before the Board.

B. Grounds for Appeal

The following is a list of the grounds on which I seek this Appeal. It is my intent to submit argument, citations to authority and supporting evidence by subsequent written submissions and at the hearing.

- (1) The use of my home as a habitable structure is exempt from the County land use regulations because it is a legal non-conforming, pre-existing use;
- (2) The use of my home as a habitable structure is permitted under the State Farm Worker Housing Program;
- (3) I did not enlarge or intensify any legal non-conforming, pre-existing use;
- (4) My home complies with County land use regulations because it is not located in a valid right of way;
- (5) I obtained all necessary permits from the County for any alteration to my home;
- (6) The Appealed Actions undertaken by Tom Burns, Ken Hart and/or Kevin Fitzpatrick are null and void because these officials are not licensed, qualified, certified and/or trained as required by Health & Safety Code § 18949.28, et seq.;
- (7) The Notice of Violation must be removed because California statutes do not permit the recording of such documents and California law preempts County Code §§ 19.01.030, 19.01.070, 19.01.080.
- (8) The Decision and Order, dated April 9, 2008, is null and void because the County did not comply with the provisions of Health and Safety Code § 17922(g) and 17920.3 governing violations relating to existing building;
- (9) The Decision and Order, dated April 9, 2008, is null and void because the Hearing Officer lacked jurisdiction over the subject matter;
- (10) The Appealed Actions are null and void because the County did not commence proceedings until after expiration of the statute of limitations;
- (11) The County is estopped to pursue this enforcement action it granted permits for the alterations it now claims are unlawful and acknowledged that my home is "habitable."
- (12) The costs and fees assessed against me are excessive and in violation of state and local law;
- (13) I qualify for a variance under Health and Safety Code § 17959.5 to allow me to make necessary alterations for habitation;

- (14) I qualify for a deferral of enforcement pursuant to Health and Safety Code § 17959.4 because of the extreme hardship I would suffer. I have been unemployed for two years and will become homeless if not permitted to live in my home.

Thank you for taking the time to review and consider this Notice of Appeal.

Sincerely,

Antoinette Jardine
APN 102-041-28
P.O. Box 912
Soquel, CA 95073

#08-373



May 11, 2009

Local Appeals Board
County of Santa Cruz
701 Ocean Street
Santa Cruz, California 95060

RE: Trent and Michelle West
APN: 043-231-11
313 Kingsbury Drive

Dear members of the Local Appeals Board (as per 2007 CBC 108.8):

I hereby appeal, under 108.8 of the 2007 CBC, the determination of Assistant Planning Director, Mr. Deming, and Planning Director Mr. Burns, during a Planning Commission hearing (4/29/09) in regards to the referenced property above, that no building permit was required for "story poles".

There is no exemption for the requirement of a building permit for "story poles" located in code. Please note that story poles in this instance would be nearly 28 feet in height. Please see county code below.

12.10.315 Work exempt from permit.

Exempted Work. Exempt structures must meet all other applicable requirements of this jurisdiction, including required minimum distances from property lines. Unless otherwise exempted by the Santa Cruz County Building Code, separate plumbing, electrical and mechanical permits will be required for the above exempted items. Exemption from the permit requirements of the Santa Cruz County Building Code shall not be deemed to grant authorization for any work to be done in any manner in violation of the provisions of this code or any other laws or ordinances of this jurisdiction.

*(a) Building permits. A building permit shall not be required for the following:
(1) One-story detached accessory buildings used as tool and storage sheds, playhouses and similar uses, when located on a parcel which contains an existing Group R, and/or Group U Occupancy, provided the floor area does not exceed 120 square feet, and the height above grade as defined in the zoning ordinance does not exceed 10 feet.*

IS.v

- (2) Fences, not over 10 feet high, except that concrete and masonry fences more than 6 feet in height measured from the lowest grade to the top of the wall shall require a building permit.
- (3) Movable cases, counters and partitions not over 5 feet-9 inches high.
- (4) Retaining walls, which retain not more than 3 feet of material unless supporting a surcharge or impounding Class I, II, or III-A liquids. Unless specifically exempted by the Building Official, retaining walls retaining more than 4 feet of material shall be designed by an engineer licensed by the State of California to perform such design.
- (5) Platforms, decks appurtenant to or adjacent to residential structures, walks, and driveways not more than 30 inches above grade and not over any basement or story below and are not part of an accessible route.
- (6) Painting, papering and similar finish work.
- (7) Temporary motion picture, television and theater stage sets and scenery.
- (8) Window awnings supported by an exterior wall of Group R, Division 3, and Group U Occupancies when projecting not more than 54 inches. However, window awnings on structures within a Wildland-Urban Interface Area as defined in Chapter 7A of the 2007 California Building Code are not exempt from permit requirements.
- (9) Prefabricated swimming pools accessory to a Group R, Division 3 Occupancy in which the pool walls are entirely above the adjacent grade, the pool is less than 18 inches in height, and the pool capacity does not exceed 5,000 gallons. Pool barriers, and anti-entrapment devices for all pools, whether below or at grade, must be in compliance with Section 12.10.218 of this code.
- (10) Children's treehouses that are less than 60 square feet, 6 feet or less in height, are entirely supported by the tree, and are constructed on a parcel which contains a single-family dwelling, unless the Building Official finds that the structure poses a hazard to health or safety.
- (11) Skateboard ramps, when constructed on a parcel which contains a Single-family dwelling and which are not used for commercial purposes, unless the Building Official finds that the structure poses a hazard to health or safety.
- (12) Children's play structures, when constructed on a parcel which contains a single-family dwelling or a school or day care center, unless the Building Official finds that the structure poses a hazard to health or safety.
- (13) Agricultural shade structures less than 12 feet in height constructed of light frame materials and covered with shade cloth or clear, flexible plastic with no associated electrical, plumbing, or mechanical equipment, other than irrigation equipment.
- (14) Water tanks supported directly upon grade if the capacity does not exceed 5,000 gallons and the ratio of height to diameter or width does not exceed 2 to 1.
- (15) Replacement in kind of gypsum wallboard if it does not serve as a fire-resistive assembly or as lateral bracing for the building.
- (16) Replacement in kind of windows or doors that meet all current energy code requirements, when the structural integrity of the opening is not affected.
- (17) Replacement in kind of exterior siding when it does not serve as a fire-resistive assembly or as lateral bracing for the building.

(18) Prefabricated structures constructed of light frame materials and covered with cloth or flexible plastic, with no associated electrical, plumbing, or mechanical equipment and the height above grade as defined in the zoning ordinance does not exceed 12 feet.

(19) Arbors, trellises, and gazebos provided the floor area does not exceed 400 square feet, and the height above grade as defined in the zoning ordinance does not exceed 10 feet. For the purpose of this Section, arbors, trellises, and gazebos are defined as follows:

Structures which have a solid or lattice roof structure;

75% of the exterior walls are not less than 75% open; and

Into which a motor vehicle cannot be driven due to the configuration of the structure or placement on the site.

(b) Plumbing permits. A plumbing permit shall not be required for the following:

(1) The stopping of leaks in drains, soil, waste, or vent pipe, provided, however, that should any trap, drainpipe, soil, waste, or vent pipe become defective and it becomes necessary to remove and replace the same with new material, the same shall be considered as new work and a permit shall be procured and inspection made as provided in this code.

(2) The clearing of stoppages or the repairing of leaks in pipes, valves or fixtures, nor for the removal and reinstallation of water closets, provided such repairs do not involve or require the replacement or rearrangement of valves, pipes or fixtures.

(c) Electrical permits. An electrical permit shall not be required for the following:

(1) Portable motors or other portable appliances energized by means of a cord or cable having an attachment plug end to be connected to an approved receptacle when that cord or cable is permitted by the Electrical Code.

(2) Repair of fixed motors, transformers or fixed approved appliances of the same type and rating in the same location.

(3) Temporary decorative lighting.

(4) Repair or replacement of current-carrying parts of any switch, contactor or control device the same location.

(5) Repair or replacement of any over current device of the required capacity in the same location.

(6) Repair or replacement of electrodes or transformers of the same size and capacity for signs or gas tube systems.

(7) Taping joints.

(8) Removal of electrical wiring.

(9) Temporary wiring for experimental purposes in suitable experimental laboratories.

(10) The cord and plug wiring for temporary theater, motion picture or television stage sets.

(11) Electrical wiring, devices, appliances, apparatus or equipment operating at less than 25 volts and not capable of supplying more than 50 watts of energy.

(12) Low-energy power, control and signal circuits of Class II and Class III as defined in the Electrical Code.

(13) A permit shall not be required for the installation, alteration or repair of

electrical (wiring, apparatus or equipment or the generation, transmission, distribution or metering of electrical energy or in the operation of signals or the transmission of intelligence by a public or private utility in the exercise of its function as a serving utility. (Ord. 4894 § 2 (part), 11/20/07)".

Please find enclosed copy of Adoption Matrix Table from the 2007 CBC noting 105.2 Building 1-13 adopted by HCD (1), and Section 105.2.

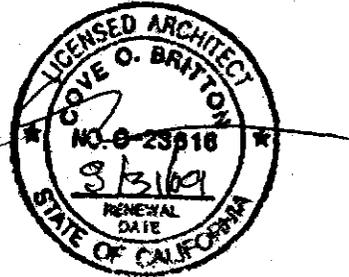
Neither 2007 CBC nor county code indicates a structure such as "story poles" are exempt from a building permit.

Please note that county amendments to 2007 CBC may not be valid, so I have provided both codes.

Thank you for the Boards' consideration.

Sincerely,

Cove Britton
Architect



**CALIFORNIA BUILDING CODE - MATRIX ADOPTION TABLE
APPENDIX CHAPTER 1 - ADMINISTRATION**

| Adopting Agency | BSC | SPM | HCB | | | DSA | | OSHDPD | | | | CSA | DHS | AGR | DWR | CEC | CA | SL | SLC |
|---|-------|-----|-----|---|------|-----|----|--------|---|---|---|-----|-----|-----|-----|-----|----|----|-----|
| | | | 1 | 2 | 1/AC | AC | SS | 1 | 2 | 3 | 4 | | | | | | | | |
| Adopt Entire Chapter | | | | | | | | | | | | | | | | | | | |
| Adopt Entire Chapter as amended (amended sections listed below) | | | | | | | | X | X | X | X | | | | | | | | |
| Adopt only those sections that are listed below | | X | X | | | X | X | | | | | | | | | | | | |
| Chapter / Section | Codes | | | | | | | | | | | | | | | | | | |
| 102.1 | IBC | | | | | | X | | | | | | | | | | | | |
| 102.1.1 | CA | | | | | | | X | X | X | X | | | | | | | | |
| 102.2 | CA | | | | | | X | | | | | | | | | | | | |
| 102.3 | CA | | | | | | X | | | | | | | | | | | | |
| 102.4 | CA | | | | | | X | | | | | | | | | | | | |
| 102.5 | CA | | | | | | X | | | | | | | | | | | | |
| 102.6 | IBC | | X | | | | | | | | | | | | | | | | |
| 104.2 | IBC | | X | | | | | | | | | | | | | | | | |
| 104.3 | IBC | | X | | | | | | | | | | | | | | | | |
| 104.4 | IBC | | X | | | | | | | | | | | | | | | | |
| 104.9 | IBC | | X | | | | | | | | | | | | | | | | |
| 104.9 | CA | | | | | | X | | | | | | | | | | | | |
| 104.9.1 | IBC | | X | | | | | | | | | | | | | | | | |
| 104.10 | CA | | | | | | X | | | | | | | | | | | | |
| 104.11 | CA | | | | | | X | | | | | | | | | | | | |
| 104.11.3 | CA | | | | | | | X | | | | | | | | | | | |
| 104.11.4 | CA | | | | | | | X | | | | | | | | | | | |
| 105.1 | IBC | | X | | | | | | | | | | | | | | | | |
| 105.2 Building 1 - 13 | IBC | | | X | | | | | | | | | | | | | | | |
| 105.2.1 | IBC | | X | | | | | | | | | | | | | | | | |
| 105.2.2 | IBC | | X | | | | | | | | | | | | | | | | |
| 105.3 | IBC | | X | | | | | | | | | | | | | | | | |
| 105.3.1 | IBC | | X | | | | | | | | | | | | | | | | |
| 105.4 | IBC | | X | | | | | | | | | | | | | | | | |
| 105.6 | IBC | | X | | | | | | | | | | | | | | | | |
| 105.7 | IBC | | X | | | | | | | | | | | | | | | | |
| 106 - 106.5 | IBC | | X | | | | | | | | | | | | | | | | |
| 109.1 - 109.2 | IBC | | X | | | | | | | | | | | | | | | | |
| 109.3.4 - 109.3.6 | IBC | | X | | | | | | | | | | | | | | | | |
| 109.3.5 | IBC | | X | | | | | | | | | | | | | | | | |
| 109.3.6 | IBC | | X | | | | | | | | | | | | | | | | |
| 109.3.8 - 109.3.10 | IBC | | X | | | | | | | | | | | | | | | | |
| 109.3.9 | IBC | | X | | | | | | | | | | | | | | | | |
| 109.3.10 | IBC | | X | | | | | | | | | | | | | | | | |
| 109.4 - 109.6 | IBC | | X | | | | | | | | | | | | | | | | |
| 109.5 | IBC | | X | | | | | | | | | | | | | | | | |
| 109.6 | IBC | | X | | | | | | | | | | | | | | | | |
| 110 - 110.4 | IBC | | X | | | | | | | | | | | | | | | | |
| 110.2 | IBC | | | | | | X | | | | | | | | | | | | |
| 111 - 111.3 | IBC | | X | | | | | | | | | | | | | | | | |
| 112-112.3 | IBC | | X | | | | | | | | | | | | | | | | |
| 113-113.2 | IBC | | X | | | | | | | | | | | | | | | | |
| 114 - 114.3 | IBC | | X | | | | | | | | | | | | | | | | |
| 115 - 115.5 | IBC | | X | | | | | | | | | | | | | | | | |

15.v

104.9.1 Used materials and equipment. The use of used materials which meet the requirements of this code for new materials is permitted. Used equipment and devices shall not be reused unless approved by the building official.

104.10 Modifications. Wherever there are practical difficulties involved in carrying out the provisions of this code, the building official shall have the authority to grant modifications for individual cases, upon application of the owner or owner's representative, provided the building official shall first find that special individual reason makes the strict letter of this code impractical and the modification is in compliance with the intent and purpose of this code and that such modification does not lessen health, accessibility, life and fire safety, or structural requirements. The details of action granting modifications shall be recorded and entered in the files of the department of building safety.

104.11 Alternative materials, design and methods of construction and equipment. The provisions of this code are not intended to prevent the installation of any material or to prohibit any design or method of construction not specifically prescribed by this code, provided that any such alternative has been approved. An alternative material, design or method of construction shall be approved where the building official finds that the proposed design is satisfactory and complies with the intent of the provisions of this code, and that the material, method or work offered is, for the purpose intended, at least the equivalent of that prescribed in this code in quality, strength, effectiveness, fire resistance, durability and safety.

104.11.1 Research reports. Supporting data, where necessary to assist in the approval of materials or assemblies not specifically provided for in this code, shall consist of valid research reports from approved sources.

104.11.2 Tests. Whenever there is insufficient evidence of compliance with the provisions of this code, or evidence that a material or method does not conform to the requirements of this code, or in order to substantiate claims for alternative materials or methods, the building official shall have the authority to require tests as evidence of compliance to be made at no expense to the jurisdiction. Test methods shall be as specified in this code or by other recognized test standards. In the absence of recognized and accepted test methods, the building official shall approve the testing procedures. Tests shall be performed by an approved agency. Reports of such tests shall be retained by the building official for the period required for retention of public records.

104.11.3 Peer review. [OSHPD 1 & 4] When peer review is required, it shall be performed pursuant to Section 341.4A.

104.11.4 [For OSHPD 1 & 4] Earthquake monitoring instruments. The enforcement agency may require earthquake monitoring instruments for any building that receives approval of an alternative system for the Lateral Force Resisting System (LFRS). There shall be a sufficient number of instruments to characterize the response of the building during an earthquake and shall include at least one tri-axial free field instrument or equivalent. A proposal for instrumentation and equipment specifications shall be forwarded to the enforcement agency for review and approval. The owner of the building shall be responsible for the implementation of the instrumentation program. Maintenance of the

instrumentation and removal/processing of the records shall be the responsibility of the enforcement agency or its designated agent.

SECTION 105 PERMITS

105.1 Required. Any owner or authorized agent who intends to construct, enlarge, alter, repair, move, demolish, or change the occupancy of a building or structure, or to erect, install, enlarge, alter, repair, remove, convert or replace any electrical, gas, mechanical or plumbing system, the installation of which is regulated by this code, or to cause any such work to be done, shall first make application to the building official and obtain the required permit.

105.1.1 Annual permit. In lieu of an individual permit for each alteration to an already approved electrical, gas, mechanical or plumbing installation, the building official is authorized to issue an annual permit upon application therefor to any person, firm or corporation regularly employing one or more qualified tradespersons in the building, structure or on the premises owned or operated by the applicant for the permit.

105.1.2 Annual permit records. The person to whom an annual permit is issued shall keep a detailed record of alterations made under such annual permit. The building official shall have access to such records at all times or such records shall be filed with the building official as designated.

105.2 Work exempt from permit. Exemptions from permit requirements of this code shall not be deemed to grant authorization for any work to be done in any manner in violation of the provisions of this code or any other laws or ordinances of this jurisdiction. Permits shall not be required for the following:

Building:

1. One-story detached accessory structures used as tool and storage sheds, playhouses and similar uses, provided the floor area does not exceed 20 square feet (11 m²).
2. Fences not over 6 feet (1829 mm) high.
3. Oil derricks.
4. Retaining walls that are not over 4 feet (1219 mm) in height measured from the bottom of the footing to the top of the wall, unless supporting a surcharge or impounding Class I, II or IIIA liquids.
5. Water tanks supported directly on grade if the capacity does not exceed 5,000 gallons (18,925 L) and the ratio of height to diameter or width does not exceed 2:1.
6. Sidewalks and driveways not more than 30 inches (762 mm) above adjacent grade, and not over any basement or story below and are not part of an accessible route.
7. Painting, papering, tiling, carpeting, cabinets, counter tops and similar finish work.
8. Temporary motion picture, television and theater stage sets and scenery.
9. Prefabricated swimming pools accessory to a Group R-3 occupancy that are less than 24 inches (610 mm) deep, do not exceed 5,000 gallons (18,925 L) and are installed entirely above ground.

10. Shade cloth structures constructed for nursery or agricultural purposes, not including service systems.
11. Swings and other playground equipment accessory to detached one- and two-family dwellings.
12. Window awnings supported by an exterior wall that do not project more than 54 inches (1372 mm) from the exterior wall and do not require additional support of Group R-3 and U occupancies.
13. Nonfixed and movable fixtures, cases, racks, counters and partitions not over 5 feet 9 inches (1753 mm) in height.

Electrical:

Repairs and maintenance: Minor repair work, including the replacement of lamps or the connection of approved portable electrical equipment to approved permanently installed receptacles.

Radio and television transmitting stations: The provisions of this code shall not apply to electrical equipment used for radio and television transmissions, but do apply to equipment and wiring for a power supply and the installations of towers and antennas.

Temporary testing systems: A permit shall not be required for the installation of any temporary system required for the testing or servicing of electrical equipment or apparatus.

Gas:

1. Portable heating appliance.
2. Replacement of any minor part that does not alter approval of equipment or make such equipment unsafe.

Mechanical:

1. Portable heating appliance.
2. Portable ventilation equipment.
3. Portable cooling unit.
4. Steam, hot or chilled water piping within any heating or cooling equipment regulated by this code.
5. Replacement of any part that does not alter its approval or make it unsafe.
6. Portable evaporative cooler.
7. Self-contained refrigeration system containing 10 pounds (5 kg) or less of refrigerant and actuated by motors of 1 horsepower (746 W) or less.

Plumbing:

1. The stopping of leaks in drains, water, soil, waste or vent pipe, provided, however, that if any concealed trap, drain pipe, water, soil, waste or vent pipe becomes defective and it becomes necessary to remove and replace the same with the new material, such work shall be considered as new work and a permit shall be obtained and inspection made as provided in this code.
2. The clearing of stoppages or the repairing of leaks in pipes, valves or fixtures and the removal and reinstallation of water closets, provided such repairs do not involve or require the replacement or rearrangement of valves, pipes or fixtures.

105.2.1 Emergency repairs. Where equipment replacements and repairs must be performed in an emergency situation, the permit application shall be submitted within the next working business day to the building official.

105.2.2 Repairs. Application or notice to the building official is not required for ordinary repairs to structures, replacement of lamps or the connection of approved portable electrical equipment to approved permanently installed receptacles. Such repairs shall not include the cutting away of any wall, partition or portion thereof, the removal or cutting of any structural beam or load-bearing support, or the removal or change of any required means of egress, or rearrangement of parts of a structure affecting the egress requirements; nor shall ordinary repairs include addition to, alteration of, replacement or relocation of any standpipe, water supply, sewer, drainage, drain leader, gas, soil, waste, vent or similar piping, electric wiring or mechanical or other work affecting public health or general safety.

105.2.3 Public service agencies. A permit shall not be required for the installation, alteration or repair of generation, transmission, distribution or metering or other related equipment that is under the ownership and control of public service agencies by established right.

105.3 Application for permit. To obtain a permit, the applicant shall first file an application therefor in writing on a form furnished by the department of building safety for that purpose. Such application shall:

1. Identify and describe the work to be covered by the permit for which application is made.
2. Describe the land on which the proposed work is to be done by legal description, street address or similar description that will readily identify and definitely locate the proposed building or work.
3. Indicate the use and occupancy for which the proposed work is intended.
4. Be accompanied by construction documents and other information as required in Section 106.
5. State the valuation of the proposed work.
6. Be signed by the applicant, or the applicant's authorized agent.
7. Give such other data and information as required by the building official.

105.3.1 Action on application. The building official shall examine or cause to be examined applications for permits and amendments thereto within a reasonable time after filing. If the application or the construction documents do not conform to the requirements of pertinent laws, the building official shall reject such application in writing, stating the reasons therefor. If the building official is satisfied that the proposed work conforms to the requirements of this code and laws and ordinances applicable thereto, the building official shall issue a permit therefor as soon as practicable.

105.3.2 Time limitation of application. An application for a permit for any proposed work shall be deemed to have been abandoned 180 days after the date of filing, unless such application has been pursued in good faith or a permit has been issued, except that the building official is authorized to grant one or more extensions of time for additional periods not exceeding 90 days each. The extension shall be requested in writing and justifiable cause demonstrated. [OSHPD 1, 2 & 4] Time limitation shall be in accordance with Title 24, Part 1, Chapter 7, Section 7-129.

Tom Burns

From: Cove Britton [cove@matsonbritton.com]
Sent: Tuesday, May 12, 2009 4:38 PM
To: 'Michael Bethke'; danbronson@sbcglobal.net; 'Martha Fiorovich'; 'David Parks'; 'Richard Irish'
Cc: Tom Burns
Subject: 043-105-12

Dear Appeals Board Members:

Due to concerns that proper public notice and meeting place arrangements have not occurred, I hereby request that my appeal currently scheduled for May 13, 2009 (for the above referenced property) re-scheduled for a special meeting as soon as possible.

Thank you for the Boards' consideration.

Sincerely,
Cove Britton
Architect

5/13/2009

IS.W

Michael D. Bethke
229 Union Street
Santa Cruz, CA 95060

May 11, 2009

The Honorable Neil Coonerty, Chairman
Santa Cruz County Board of Supervisors
701 Ocean Street, Room 500
Santa Cruz, CA 95060

SUBJECT: Resignation Letter – Building, Accessibility & Fire Code Appeals Board (BAFCAB)

Dear Mr. Coonerty,

Please be advised that I am still extremely appreciative of the faith and confidence your Board had put in me when you all considered my appointment to the BAFCAB, but it is with a sad and heavy heart that I must now tender my formal resignation.

As I had previously assured you and Supervisor Pirie, my primary goal once I was elected Chair of this Board was to initiate a transparent and restorative “healing” process whereby many of the disheartened citizenry of this County could ventilate their often emotionally laced issues/concerns via a new public hearing process that they were apparently seeking for many years. The small steps we were initiating to slowly begin the citizens’ restorative trust in County Government was obviously the desired public policy goal.

Although we have only had two public hearings as of this date, I have worked extremely hard to ensure that these hearings were conducted with the utmost civil decorum. As the Community Television recordings of these hearings would attest, I think I have done an admirable job maintaining order and considerate dialogue given the often volatile circumstances. (I have been exceptionally defensive of County staff members by immediately cutting off any personal attacks made upon them.)

Even though I would love nothing more than to see this ongoing “healing” process continue to evolve, my only concern now is with the resistance that I seem to be encountering with the planning department’s senior management staff. Some of the recent and rather dismissive verbal exchanges I have had with these staff members during private meetings leads me to believe that they do not respect the incredible amount of time and professional services that I am graciously donating to the County. (The rather brusque and condescending attitudes are what I object to the most.)

At the very least, the only thing I was seeking was just a modicum of respect as payment for all my volunteer services. Absent that, and as I have grown older - and hopefully a little more wiser - the most valuable lesson I have learned is that life is far too short to waste precious time on small-minded people with mean-spirited attitudes. That is why I must now move on to other endeavors where I hope my gifts and talents will actually be appreciated.

I truly wish you all the very best.

Respectfully submitted,



Michael D. Bethke

Cc: Building, Accessibility & Fire Code Appeals Board

David Lee

From: Marty Fiorovich [marty@fiorovichgroup.com]
Sent: Tuesday, May 12, 2009 1:24 PM
To: Michael Bethke; Michael Bethke; Martha Fiorovich; Richard Irish; David Parks; Jennifer Hutchinson
Cc: David Lee; Mark Deming
Subject: Agenda

Follow-up on Friday Meeting and Agenda for Meeting:

I am e-mailing a revised agenda (pdf & word documents) from Michael and me, but I wanted to point out items that may have critical time issues. Our revised agenda will reflect these items as well as other changes. Call me if you have any clarifications or questions. Cell is best - 212-2474

Also, could you please send me a copy of the corrected minutes from our first meeting, March 16th, 2009? We will want them handed out at the meeting as well.

In conformance with the Board of Appeals vote in our March meeting:

1. Meetings for Appeals need to be scheduled as a special Meeting. Please schedule the latest appeal separately.
Regular meetings are to be the 3rd Monday of the Month. This was not done correctly last month, and we need to get back on track. It is critical that we spend time in setting up our process, and as we discussed, we will probably have time during regular meetings, once established, to hear Appeals at that time. We realize that there are time deadlines for responding.
2. Continued Appeal Item next meeting: This item was discussed with the appellant and agreed upon to be continued "picking up where we left off". At our last meeting we were specifically asked to wait until after we reviewed our process, which was not finished due to the late hour of last meeting.

5/13/2009

15.y

David Lee

From: Marty Fiorovich [marty@fiorovichgroup.com]
Sent: Tuesday, May 12, 2009 5:20 PM
To: David Lee
Cc: Michael Bethke; Mark Deming; Jennifer Hutchinson; Tom Burns
Subject: Re: agenda for Mon meeting

Yes I understand the time line concerns and appreciate that information.

It was understandable that there was a misunderstanding about the proposed agenda and the details of its continuance - we were all very tired. I only caught it when I was watching the Community Television recording.

Thank you.
Marty

On May 12, 2009, at 3:08 PM, David Lee wrote:

>
> We received your revisions to the agenda for next Monday's BAFCAB
> meeting and will revise accordingly. But the one item that I wanted
> to get back to you right away on is regarding the second appeal. We
> tried to set this for a special meeting on June 1st, but due to
> scheduling issues with County Fire, we were unable to find another
> time within the 30 day window. So the Chief asked for the matter to
> be added to the 5/18 agenda. The required 10 day notice has already
> been sent to the appellant. Therefore, this item needs to go on
> the agenda. Your Board always has the option of continuing the
> appeal to another date if you so choose, but the second appeal will
> need to be on the agenda.
>
> I thought at our April meeting there was concurrence to start right
> away with the appeals, but your proposed agenda suggests otherwise.
> Unless I hear something right away from the Chair, I will list the
> items in the order you have suggested, with the insertion of the
> second appeal as a new item 10..
>
> thanks for getting back so promptly. dave
>

David Lee

From: marty [marty@fiorovichgroup.com]
Sent: Wednesday, May 13, 2009 8:58 AM
To: David Lee
Cc: Jennifer Hutchinson; Richard Irish; David Parks; danbronson@sbcglobal.net
Subject: Re: To be added to the BAFCAB 5/18/09 Agenda

Please make the following revisions to the Agenda in accordance with the request of the Acting Chair:

In accordance with David Parks requests, the first is taken care of in Item #1 below. The second needs to be added under Item 7 (or whatever it is changed to) "Continued consideration of the Appeal Process..... and add as Listed item #6 - "Clarification of who exactly is the Building Official for the County of Santa Cruz"

Acting Chairperson Dan Bronson's comments are directly below (as well as the forwarded request)that went to Jennifer Hutchinson.

1. Please insert Election of Chairperson and Vice-Chairperson as Item #2 and renumber the other items as needed.
2. Please also remove the headings
 -Consent agenda
 -Regular Agenda
 and use Unfinished Business for the heading.
3. Just above Adjournment please insert New Business / Agenda Items for Next Meeting

Note: The Sturgis manual (SC County requirement) called
 The Standard Code of Parliamentary Procedure - Agendas pages 114-121

On May 12, 2009, at 11:43 PM, dan bronson wrote:

Martha Fiorovich, Member, BAFCAB
 Jennifer Hutchinson, Secretary, BAFCAB

Ms. Fiorovich,
 I know you have been helping in the preparation of this Agenda.
 but I just realized that these are needed on the Agenda especially
 given todays events. I had wished to discuss these with you first
 but we didn't get to connect.

5/13/2009

15.aa

Ms. Hutchinson,

1. Please insert Election of Chairperson and Vice-Chairperson as Item #2 and renumber the other items as needed.

2. Please also remove the headings

-Consent agenda

-Regular Agenda

and use Unfinished Business for the heading.

3. Just above Adjournment please insert New Business / Agenda Items for Next Meeting

Note: The Sturgis manual (SC County requirement) called
The Standard Code of Parliamentary Procedure - Agendas pages 114-121

Respectfully,

Dan Bronson, Acting Chairperson