

MARIPOSA COUNTY

Code Compliance Advisory Committee

MEETING #32 FINAL MINUTES (Approved 8/2/23)

DATE: July 19, 2023
TIME: 2:00 - 4:00 PM
LOCATION: Board of Supervisors Chambers, 2nd Floor
5100 Bullion Street, Mariposa CA

1. Call to Order and Welcome at 2:03 p.m. by Chair Woblesky.

CCAC Members Present: Kris Casto, Gabe Edwards, Robert Fox, Ken Melton, Colleen Rhodes, and Karen Woblesky.

CCAC Members Excused: Lydia Clary, Cassandra Beth Scaffidi.

County Staff Present: Steve Engfer (Planning), Corrina Miranda (Planning), Carolyn Coder (Environmental Health), Patience Good (Fire), Justin Meisner (Building), Steve Dahlem (County Counsel).

Public Present: Al Golub.

Chair Woblesky welcomed members, guest, and staff and announced the presence of a quorum.

2. Approve Minutes of CCAC Meeting #30, 6/21/2023

Members reviewed the minutes and suggested one change.

Motion by Casto to approve the minutes as corrected.

Second by Rhodes.

Motion passed: 5 ayes, 0 nays, 1 abstention (Fox).

3. Approve Minutes of CCAC Meeting #31, 7/5/2023

Members reviewed the minutes and suggested no changes.

Motion by Fox to approve the minutes without change.

Second by Casto.

Motion passed: 5 ayes, 0 nays, 1 abstention (Edwards).

4. Persons wishing to speak on a matter not on the agenda, but within the jurisdiction of the committee. No action will be taken by the CCAC.

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Chair Woblesky invited public comment. There was none.

Melton asked that in the future this item (#4) not be duplicated on the agenda as it is today (see #10). Woblesky and Engfer agreed to make the change. No action.

Chair Woblesky asked Miranda for a brief summary of the enforcement action that was taken after the previous meeting at the location known generally as Whispering Pines. Miranda gave a short summary. No action.

Engfer brought up the work being done by former Planning Director Williams, assisted by the firm of Mintier Harnish, on Mariposa County Code Titles 16 and 17. No action.

5. Discussion and Possible Action for Recommendation to the Board of Supervisors re: Final Draft #3 Memorandum re: CCAC Findings and Recommendations for an Effective and Innovative Mariposa County Code Compliance Program.

Chair Woblesky read portions of the Final Draft #3 Memorandum and pointed out the changes she made after the last meeting, including altering the format. One minor edit was suggested (strike “only” from page 4 of 14). Concern was expressed that time is running short to get the memorandum on the Board of Supervisors’ agenda in time for the August 8 roundtable discussion with the Board.

Motion by Edwards to approve the memorandum as amended.

Second by Casto.

Motion passed: 6 ayes, 0 nays, unanimous. Engfer asked for a roll call vote. All members voted in the affirmative: Casto, Edwards, Fox, Melton, Rhodes, Woblesky.

6. Possible Action for Recommendation to the Board of Supervisors re: Updated Building Codes/Ordinances/Resolutions.

Chair Woblesky introduced this item, which is an issue Clary has been working on with Willis (Building). Casto moved that the memorandum be moved forward. Melton asked for clarification of some terms used in the item. Fox pointed out that residential building permits are valid for three years, but the item regarding MCC 15.10.050 refers to one year. Staff attempted to provide clarification. After considerable discussion, it was generally agreed that the second item, MCC 15.10.050, should be held back for possible correction or clarification. Edwards proposed that the CCAC move forward all items except MCC 15.10.050. Casto withdrew her motion and seconded Edwards’ motion.

Motion by Edwards to forward all changes, except MCC 15.10.050.

Second by Casto.

Motion passed: 5 ayes (Casto, Edwards, Melton, Rhodes, Woblesky), 0 nays, 1 abstention (Fox).

7. Discussion/Possible Action re: Lessons Learned from Rick Reid, Hearing Officer for the City of Modesto, including how the Administrative Hearing Process would work in Mariposa County.
NOTE: This agenda item is continued from CCAC Meeting #30, 6/21/2023

Chair Woblesky introduced this item. All agreed that Rick Reid’s presentation was very interesting. Fox stated that it is clear that a disinterested third party is important for fairness. No action taken.

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Sounds coming from the telephone call-in system seemed to indicate that a caller was present. Chair Woblesky invited the caller's participation, but nothing was said, so the meeting moved on.

8. Presentation and Discussion by Steve Dahlem, Mariposa County Counsel re: Utilizing the Abatement Process as a Tool in Code Compliance

Dahlem described several enforcement mechanisms in general terms. Talked about due process concerns with an emphasis on procedural due process (notice and opportunity to be heard at every stage of the proceeding). Read the text of Government Code section 25845 (administrative abatement) to the committee. Stated that the county doesn't have the comprehensive procedures in our codes required to make GC 25845 effective here. Rhodes asked about the requirement under GC section 25845 that a hearing officer be appointed under GC section 27720 et seq. Asked about GC section 27724's requirement that such a hearing officer be an attorney with five years of experience. Dahlem agreed that an Office of Hearing Officer would be too costly. Stated that the county's experience with hearing officers is very limited. He gave the example that there have been no hearings under the parking ordinance, so the attorney who was contracted has not held any hearings. Rhodes asked about the requirements for a hearing officer appointed to hear administrative fines appeals, which is constrained by Government Code section 53059.4. Dahlem emphasized the need to keep due process concerns in mind and to provide for the selection of a neutral hearing officer.

Dahlem stated that he thought the CCAC's original task was to review the 2020 County Code Amendment 2019-218. Rhodes stated that evaluating the code proposal required the CCAC to become familiar with the underlying state law requirements. Dahlem believes that it is important to have processes that have procedural due process as part of their terms.

Dahlem then addressed summary abatement and read the portion of GC section 25845 which guides that process. Stated that it is a very limited remedy available only in certain emergency situations. A post-abatement hearing must be given to the property owner. It is important to know that the government entity bears the burden of proving that the summary action was required and justified. Code staff must limit their action to alleviating only the emergent problems. Other violations would have to await other processes.

Dahlem then addressed judicial abatement. Read the text of Code of Civil Procedure 731 to the committee. Described the two types of actions that can be brought under 731: (1) for the public entity in its representative capacity, and (2) for itself as the harmed property owner. Under the first, the public entity can seek abatement but cannot recover its costs for abatement, etc. Injunction is the legal theory by which these actions are brought. Dahlem stated that the order is not self-executing.

County Counsel has handled 50 cases between 2009-2022 for the Building Department. Only three of these involved litigation. County Counsel assisted Environmental Health in 35 cases during those 13 years, by correspondence primarily. One litigated case. Assisted Sheriff with 148 animal control cases (vicious dogs) between 2011-2022. These were handled under the Agriculture Code.

Dahlem asked rhetorically, what is successful? His answer is working cooperatively with willing individuals. Communication. Education. Having a remediation plan. Making accommodations is successful, whether allowing payments over time or allowing additional time for compliance. Helping locate additional services through Health and Human Services and other departments.

Dahlem said that the challenges and issues occur primarily when individuals are uncooperative, that is where the challenge is and where the CCAC may be helpful. Prioritizing health and safety violations is important and should be our focus.

Dahlem stated that currently, litigation is the only means for seeking cooperation from uncooperative individuals. Historically, criminal prosecution has been disfavored in this county. Civil action can vary. The threat of litigation can sometimes be the nudge that causes an individual to become cooperative. But as to those who remain uncooperative, litigation is largely ineffective, inefficient and costly. Dahlem stated that litigation is always costly. Takes 18 months to two years even without appeals. Wants to avoid criminalizing code enforcement. Stated that we are required to use outside counsel because we are a small office. Very costly.

Fox stated that we need to keep in mind a third category of violators. That category is property owners who are unable to make improvements due to physical or financial difficulties or both. Casto stated it doesn't sound like there are many solutions here and asked Dahlem to give some hope. Dahlem responded that the litigation and judicial approach is ineffective and costly, but that administrative abatement could allow some solutions. He believes an administrative abatement ordinance needs to be added, something similar to the code amendment offered in 2020 (County Code Amendment 2019-218).

Rhodes asked Dahlem where Health and Safety Code section 17910 et seq fit in with all these other codes and processes. Dahlem deferred to Miranda, who said she didn't understand the question. Rhodes clarified that H&S Code section 17910 et seq, the State Housing Law, is available to code compliance staff. Miranda stated that she believes that an administrative citation/abatement is needed in addition, and added that she doesn't know. Dahlem said that he's not familiar with that, but he thinks it is worth follow-up.

Edwards asked about GC code 25845 and asked if Dahlem would characterize abatement when done administratively as less of a hammer than when done judicially. Dahlem responded that administrative abatement has significant consequences for an owner. Woblesky asked why administrative abatement would be more seriously regarded than judicial. Dahlem answered that it allows more recovery.

Woblesky asked about health and safety violations and the need to focus on fixing those problems, as through abatement, rather than on fines or other processes. Dahlem agreed. He stated further that if the public health issue is not being fixed then the point is being missed. He believes the focus should be on abatement rather than fines.

Woblesky asked if anyone from the public, on the phones or present in person, wished to ask a question or make a comment. None did.

9. Discussion/Possible Action re: Future CCAC Agenda Items. Next CCAC Meeting is scheduled for August 2, 2023. (Meeting #33)

Chair Woblesky stated that our next meeting will be the last before we talk with the Board of Supervisors on August 8, so we need to go over the memorandum together again. Brought to everyone's attention the Grand Jury report and the Mariposa County Nonresidential Market Study by EPS. Casto asked for an item to prioritize communication and to brainstorm about how to be positive and proactive and communicate with people. Casto would also like an update on the Code Violations Log. Melton reminded the group that we have prioritized our subjects in the past and it could be a good

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idea to revisit that to bring everyone up to date. Casto indicated a need to know the difference between infractions and citations and other concepts. Woblesky agreed with Casto that it is important for CCAC members to have a full understanding of the various ideas and options involved in code compliance. Casto suggests that we brainstorm about what know that we can ask or tell the public. Fox would like to discuss abatement in more detail. Woblesky stated that she will place (1) communication, and (2) abatement on the next agenda. Melton brought up amnesty and our need to focus soon on that subject. Woblesky modified her plan for the next agenda to include amnesty.

10. Persons wishing to speak on a matter not on the agenda, but within the jurisdiction of the committee. No action will be taken by the CCAC.

This agenda item duplicates agenda item #4 and was dropped.

11. Adjourn 4:05 P.M.

Motion by Casto to adjourn.

Second by Melton.

Motion passed: 6 ayes, 0 nays, unanimous.

Minutes submitted by Colleen Rhodes, CCAC Secretary