

MARIPOSA COUNTY

Code Compliance Advisory Committee

MEETING #33 FINAL MINUTES (Approved 08/16/23)

DATE: August 2, 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 2:04 p.m. by Chair Woblesky.

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

CCAC Member Excused: Cassandra Beth Scaffidi.

County Supervisor Present: Miles Menetrey.

County Staff Present: Steve Engfer (Planning), Corrina Miranda (Planning), Raider Fowler (HHSA), Lizz Darcy (PIO).

Public Present: Al Golub.

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

2. Approve Minutes of CCAC Meeting #32, 7/19/2023

Members reviewed the minutes and suggested no change.

Motion by Edwards to approve the minutes as presented.

Second by Fox.

Motion passed: 7 ayes, 0 nays.

3. Persons wishing to speak on a matter not on the agenda, but within the jurisdiction of the committee..

Chair Woblesky invited public comment. There was none.

4. Informational Update from Planning Department re: Whispering Pines; Code Compliance Department Head Round Table; and Identification of Top Ten Worst Code Compliance Cases.

Miranda summarized the status of work regarding Whispering Pines, which is now vacant; HHSA relocated the tenants; the operator is waiting for FEMA funds to take down the first two buildings; the

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need for rebuilding the bridge, which is beyond salvage, will likely slow the process. Stated that they are still on the originals of the Top Ten list. The Muir Lodge project is ongoing; there will be a gate installed for the Southern Sierra Mi-Wuk who have a right of way through the property. A warrant was served on a property in May; there are issues because the owner has passed; the property is in foreclosure.

Engfer stated that a short-term rental property, which continues to be out of compliance with county codes and is operating without a transient occupancy certificate, will be acted on soon. The Code Compliance Department Head Round Table has not met again recently; there are some other activities that have taken the place of that; Planning takes the lead and will convene again fairly soon.

Miranda said she has been dealing with CalFire on a number of issues. She also stays in contact by email with up to fifteen representatives of different departments and agencies.

Clary explained that there need to be defined criteria and processes that move properties to the Top Ten; needs to involve all the relevant departments and cannot be arbitrary. You can't just pick and choose.

Discussion concerning health and safety and substandard definitions, renters/tenants versus landlords, and similar situations.

5. Informational Update from Chair Karen Woblesky re: upcoming Board of Supervisors' Roundtable with the CCAC.

Chair Woblesky informed everyone that the new date for the CCAC's roundtable with the Board of Supervisors is September 12. The discussion is set to begin at 2 p.m. in the Board Chambers. She described that a PowerPoint is being prepared to assist in guiding the conversation, with a focus on the discussion that occurred when Supervisor Menetrey visited the CCAC on May 3, 2023. The PowerPoint will be presented to the CCAC for approval. Supervisor Menetrey expressed a preference for the PowerPoint to be included in the Board of Supervisors' agenda packet for September 12.

6. Possible Action for Recommendation to the Board of Supervisors re: Updated Building Codes, Ordinances, and Resolutions. Purpose is to review Mariposa County Code 15.10.050, Expiration of Building Permits.

Chair Woblesky introduced the item. Clary described her concerns with MCC 15.10.050 as written and explained the changes she would like the CCAC to recommend to the Board. She explained that the three years specified in the code is actually more restrictive than the one year in the original state version. Allowing an extension "one or more times" without a defined expiration date allows more flexibility for the property owner without limiting the ability of the county to inspect and monitor the project. As currently written, permit expiration and renewal may result in the builder having to meet the requirements of new state codes, including re-engineering, and should be avoided. Discussion ensued including several comments about how long it takes to get building projects done in our remote, rural area.

Motion by Edwards to recommend that the Board of Supervisors adopt the change to MCC 15.10.050 as discussed, to include removing the three-year limitation and replacing it with one year as specified in the original state version with extensions subject to the Building Official's discretion, i.e., follow the state code.

Second by Clary.

Motion passed: 7 ayes, 0 nays.

7. Presentation from CCAC Member Colleen Rhodes re: California Code Enforcement Options

Chair Woblesky introduced the item, drawing attention to the written document included in the agenda. Rhodes stated that the document included in the agenda can be considered a resource that does not need to be read in one sitting but may be consulted as needed. It includes statutes that demonstrate that the state provides a wide range of code enforcement options to local governments, including criminal prosecutions, administrative fines, the State Housing Law, and three forms of abatement (judicial, summary, and administrative).

We need to begin our analysis with a look at the type of code enforcement problem to be addressed. Is it a substandard housing issue, junk, or another type of nuisance. Mariposa County Codes are not discussed in this report. They include criminal charges under MCC 1.20.010 and 1.20.030, which are rarely used and fines under MCC 15.10, which have never been used.

Procedural due process was highlighted at our last meeting by County Counsel Steve Dahlem and needs further discussion. Due process is available to a great extent as long as the matter can be taken to the courts, so local codes must not create barriers to court access. County Code Amendment 2019-218 provided for hearing officers under both Chapters 1.40 and 1.42. The hearing officers as defined did not appear to be neutral parties. It's essential that the hearing officer (or hearing board) be neutral. If property owners are prevented from going through the local hearing process, they are also blocked from receiving due process in court. As Dahlem told us, procedural due process requires notice and the right to be heard at every stage of the proceedings. A high hearing fee stands in the way of accessing due process and is not acceptable.

From the outset, it's essential to understand the definitions of fines, fees, and costs (page 2 of the Options report). Distinguishing between fines and fees will prevent major errors like those made in 2019-218. It must always be kept in mind that fines are punishments and do not provide for abatement. The potential for to abuse of fines through Government Code section 53069.4 is great and must be avoided. Fines can be ruinous. If you include fines in liens or special assessments, you likely will take people's houses from them. There is no relationship between fines and costs. The determination of fee amounts is regulated by the California Constitution. Once you understand fines, fees, and costs, you know that there is no authorization in any state statute to include fines in special assessments and liens.

Judicial abatement as defined in Code of Civil Procedure 731 includes two different theories. The first allows for the owner of the property, including a county, to sue for injunctive relief, abatement, and damages. The second theory defines what the county can do in its representative capacity. Under this theory, no damages are available.

A more attractive option for the county, but not for property owners, is defined under Government Code section 25845. It is very different from criminal prosecution, which does not allow collection of investigative or prosecution costs. GC 25845 allows the county to recover administrative costs and attorneys' fees and provides for special assessments and liens. But note again that fines are not recoverable through special assessments and liens.

The ability to distinguish and discuss policy issues improves once you understand the statutory framework.

The State Housing Law, Health and Safety Code section 17910 et seq, is large, but only six sections are included in the Options report.

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Counties may make or enforce within their limits codes that are not in conflict with general state laws. As complex as these options are, they provide a range of alternatives that can contribute to a more acceptable code enforcement program.

Woblesky observed that the potentially massive fines in 2019-218 could quickly become a block to being able to access due process through hearings or the courts; also noted that fines do not provide for abatement. Fox stated that he believes county resources should not be used to enforce against private nuisances and that the entire definition of nuisance is nebulous and subject to potential abuse. Both Melton and Fox stated that the definitions of nuisances included in 2019-218 were far too broad.

Woblesky asked about changes that may be made to code. Rhodes responded that public policy issues need to be decided first. Changes may be needed to Title 1 and other changes regarding Titles 16 and 17 are being worked on by Sarah Williams. Health and Safety Code section 17910 et seq, the State Housing Law, defines substandard housing. A "reasonable time to correct" is required by the State Housing Law and by other statutory options as well.

Each of these statutory options provides different approaches to fining or abatement, different timelines, and different hearing procedures and hearing officers or boards.

Edwards summarized that it is clear there are many tools and that they encompass a wide breadth of approaches. He referred to the purposes for which the CCAC was created. He considers the Options report to be a primer of sorts.

Supervisor Menetrey said he was glad he attended. He has a lot to digest. He would like to get the report to the other supervisors sooner rather than later.

8. Discussion/Possible Action re: Future CCAC Agenda Items and Priority Identification and Focus for Remainder of 2023. Next CCAC Meeting is scheduled for August 16, 2023. (Meeting #34)

Chair Woblesky would like to get the criteria for the Top Ten, and would like to discuss the Power-Point for the September 12 meeting. Fox has a risk assessment heuristic that is helpful in quantifying risks and would like to make a presentation.

9. Adjourn 4:05 P.M.

Motion by Edwards to adjourn.

Second by Casto.

Motion passed: 7 ayes, 0 nays, unanimous.

Minutes submitted by Colleen Rhodes, CCAC Secretary