

LANE COUNTY LAND USE TASK FORCE REPORT

GOAL 1 CODE COMPLIANCE PROPOSAL

Goal: To provide staff with additional leverage for resolving code compliance issues.

Consensus on Goal? Yes

Original Proposal: Deem applications incomplete if an "alleged violation" exists on the property.

Alternate Proposal: Formalize existing staff practice of examining the property file when a land use or permit application is received, and referring any unresolved compliance actions to the compliance officer for further action.

Consensus on Alternate Proposal? Yes

Potential Measure 49 claims? No

Measure 56 notice required? No

Discussion:

This issue was considered and resolved at the April 5, 2010 meeting. Members were given a 9-page memo from Jeff Towery, dated March 21, 2007, that discusses the compliance program in detail. There was general agreement that a critique of the operations of the compliance program was beyond the scope of the LCLUTF's duties, and that some of the concerns raised by members and citizens could not be addressed with code changes.

Compliance officer Jane Burgess spent an hour explaining the county's current practices. Complaints follow a three-stage process, beginning with a "Request for Voluntary Correction," a letter sent after the county becomes aware of a potential violation via a complaint or staff observation. Ms. Burgess indicated that most issues are resolved after sending this letter. If the recipient does not respond to the letter, staff then decides whether or not to take it to the next stage, an "Order to Comply." The bar is set higher for this second stage, in terms of proof, than for the initial stage. This may then progress to imposition of penalties.

Lane Code Section 5.017(12) already has a provision whereby the County may withhold permits or licenses if a penalty goes unpaid. However, this is the final stage of the enforcement process. The author's goal was to provide a tool that could be utilized prior to this point. This code provision also does not address land use applications, which are legally different than permits and licenses.

Concerns raised with the original proposal included the vagueness of the term "alleged violation," the need to be reasonably certain that a violation exists before taking punitive action, the statutory requirements for processing times on land use applications, and the need for a nexus to exist between the compliance issue and the application request in order to withhold a finding of completeness or an approval.

There was considerable discussion about the appropriate point in the compliance process to take actions involving delaying or withholding applications. Staff told the group that compliance actions are usually resolved quickly once an Order to Comply has been issued, since penalties are the next step and there are strong provisions already in place for enforcing those. Therefore, the group agreed that hinging action on the Order to Comply was likely too late in the process to make much difference. On the other hand, the group felt that delaying or withholding permits at the Request for Voluntary Correction stage would be premature since staff reported that the level of proof needed to initiate that first step was fairly low.

Thus, it appeared it would be difficult to find an equitable, timely and clearly defined triggering event for withholding a permit in the manner originally envisioned by the author.

Members were told of a fairly recent change in staff practice, whereby when a land use or permit application is received, the property file is checked for outstanding compliance actions, including Requests for Voluntary Compliance. If any unresolved compliance actions are found, staff refers the matter to the compliance officer for further action. Although the referral does not directly impact the application process nor guarantee any certain outcome, this practice has apparently been helpful in resolving outstanding compliance problems.

The group decided that formalizing staff's current practice was the most favorable way to resolve this issue, since it would trigger action in the early phase of the compliance process, but without the concerns of tying application approvals to unproven allegations or unrelated problems, or of delaying land use applications and risking mandamus actions.

A new Lane Manual section is proposed, as follows:

5.013 Coordination of Compliance and Permitting.

Upon receipt of a land-use application or other permit application, Land Management Division staff shall review the document and determine if there are any compliance actions pending as to the subject property. If pending compliance actions are found, Land Management Division staff shall refer the application to Compliance Program staff.

Submitted this 4th day of May, 2010, by:



Mia Nelson, Chair