

COLAB SAN LUIS OBISPO COUNTY

WEEK OF JULY 29-AUGUST 4, 2012

NO BOARD OF SUPERVISORS MEETING ON TUESDAY JULY 31, 2012

PLANNING COMMISSION RECOMMENDS SEVERE RESTRICTIONS IN
PASO ROBLES WATER BASIN

ANTI-FREE SPEECH ORDINANCE REJECTED

APCD BUDGET ADOPTED WITH ONE-TIME FUNDS

SLOCOG TO CONSIDER REGIONAL HOUSING ALLOCATION

Board of Supervisors Meeting of Tuesday, July 24, 2012 (Completed)

Board Rejects Consideration of Ordinance Limiting Free Speech. The Board unanimously rejected setting a hearing to consider a draft ordinance which would have seriously infringed on First Amendment Constitutional rights. The ostensible purpose of the ordinance was to strengthen County controls over public activities within and on land surrounding its facilities. At first it appeared that this was proposed largely in response to the Occupy Wall Street Group, which camped out on the SLO Courthouse lawn for several months last fall, as well as the specter of more and more people living in their cars and vans seeking safe places to park at night – that is, camping problems on public property.

The problem was that the ordinance contains restrictions on public assembly and free speech which have nothing to do with camping, traffic safety, sanitation, fire hazards, environmental protection, etc. Over 30 people spoke in opposition to the Ordinance. There were no speakers in favor of the ordinance. The Board and staff were shocked. Retiring County Administrator Grant had to take the hit for proposing the ordinance. He gratuitously and publicly expressed anger at the opposition by citing Santa Barbara County's 1954 facilities ordinance as a "much more strict and offensive comparable example."¹ Was this an attempt to impugn COLAB and its Government Affairs Director, who had served for many years as CEO of Santa Barbara County? Retiring County Counsel Warren Jensen, who was the scrivener of the Ordinance, had nothing to say. Some Supervisors displayed grim expressions as speaker after speaker chastised the County for floating such an idea. Several

¹ Santa Barbara County's facilities ordinance only requires permits for events which are designed to host large crowds or which can be predicted to host large crowds. Over the years, there have been scores of spontaneous events in front of various County buildings and the historic Santa Barbara County Courthouse. These include labor protests, war protests, political rallies, Girl Scout Cookie sales, the Heart Fund, to name a few.

Board members held their hands to their faces and/ or stroked their beards in displays of nervousness.

Supervisor Gibson took pains to defend the County Administrator: “I fully trust Mr. Grant that this was to protect health and safety... .” “But First Amendment not covered...poorly drafted...does not properly speak to the First Amendment... .”

Supervisor Hill said that he was aware that the Parks Commission “was considering similar policy.” (It should be noted that Hill’s Park Commissioner had previously spoken during public comment on the item, and stated that the Commission had heard similar proposals several times and had rejected them each time.) Hill continued that “provisions are over-broad in relation to First Amendment rights.” He stated that the proposed August 21, 2012 hearing should be cancelled.

Supervisor Mecham stated: “The road to hell is paved with good intentions.” Supervisor Teixeira said he agreed with what had been said by the others and that the ordinance was “a little overbearing.”

Supervisor Patterson stated that “when the ordinance comes back, it needs to have clear articulation of purpose.” Hill stated, “We don’t want to regulate spontaneity.”

The Board directed staff to vet a revised ordinance with various County boards and commissions and “public interest groups” prior to returning it to the Board for further consideration. It was not continued to a future agenda.

Underlying Problem:

The County staff is obsessed with expanding the role of the government and regulation. In recent months we have seen the Board (including even the current Board Majority) reject a proposed Events Ordinance regulating when and how people can conduct public events on their farm, ranch, estate, historic barn, etc. We have seen them reject a proposed overbearing and controversial truancy ordinance. Their rejection of the subject anti-free speech ordinance is the latest example. These and other adopted and pending efforts betray the County staff’s total misunderstanding of the proper role of government and its officials.

A serious reorientation and organizational culture change needs to take place. Ultimately this is a performance test for the new Board majority that takes office in January, 2013. Some appointed officials may be able to develop a new outlook and understanding through training tied to performance reviews. Others may have to be replaced.

Background: The key offending provisions are repeated from last week’s update because this is such a significant issue:

No person, group, or organization shall make use of County facilities or vacant land for public gatherings, meetings, conferences, rallies, assemblies or other similar purposes, without first having obtained a permit therefore and at rates established in the fee schedule adopted by the Board of Supervisors. The provisions of this section shall not apply to meetings of public agencies and officials or County employees in the performance of the duties of their office or employment.

COLAB comment: The First Amendment to the U.S. Constitution states: “Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or the press, or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.”

It does not say, the General Services Director of San Luis Obispo County, backed by her Board of Supervisors, gets to decide whether or not to issue the citizens a permit and charge them a fee for the exercise of this “right.” Is it the intent of the Board to ban spontaneous assemblies, speeches, flyers, newspapers, etc.? Is a Constitutional right subject to permit or is it a right?

The ordinance is all the more offensive, as it exempts the government officials and employees. So the APCD can have Mr. Eco come over and prance around in tights and hand out propaganda flyers, but if you want to counter-protest you are required to apply for a permit and you have to pay a fee.

Another provision states:

Distribution of Handbills. No person shall distribute, circulate, give away, throw, or deposit on the ground, post or affix to any tree, fence, or structure situated at any County facility or on vacant land, any handbills, circulars, pamphlets, papers, notices, or advertisements, which material calls the public attention in any way to any article or service for sale or hire, nor shall any person solicit or collect donations of money or other goods from the public at any County facility or on vacant land, without a permit issued by the Director or designee.

COLAB COMMENT: Does this mean that the North County Patriots Tea Party cannot solicit donations at a rally on the Courthouse lawn without a permit issued by the General Services Director? How about the Board of Realtors, the San Luis Obispo Cattle Women’s Art Show, the NAACP, the Navy League, or CAL Poly ROTC, etc.? What if the matter is urgent, sudden, and compelling? What if there is not time to get a permit? What if the General Services Director and CAO don’t like the organization or their flyer?

(c) Public Gatherings. Prior to holding any public gathering, meeting, conference, rally, or assembly at a County facility or on vacant land, a permit issued by the Director or designee must be secured.

COLAB COMMENT: Would this mean that individuals and groups cannot gather, speak, and leaflet on the open area in front of the County Building main entrance without paying a fee and obtaining a permit in advance?



Should you need a permit to sell Girl Scout Cookies on the Court House lawn?

No Board of Supervisors Meeting on Tuesday, July 31, 2012 (5th Tuesday Rule)

The San Luis County Board of Supervisors does not meet on the 5th Tuesday of months containing 5 Tuesdays. You are not safe. It gives the staff more time to work on even more regulations and ordinances. We have heard speculation that the current Board majority has instructed staff and the Planning Commission to drive forward with at least nine pending pieces of regulatory regulation so that it can adopt them prior to January, 2013. Expect the Paso basin water restrictions to appear on a Board agenda soon.

Air Pollution Control District Meeting of Wednesday, July 25, 2012 (Completed)

APCD 2012-13 BUDGET

APCD Proposed FY 2012-13 Annual Operating Budget. The proposed FY 2012-13 \$4.4 million Budget was adopted unanimously. The Budget is balanced with \$613,000 “prior year fund balance,” which is a onetime source, meaning that the subsequent year budget starts out with a \$613,000 deficit. COLAB pointed out that, per the Commission’s own draft strategic financial plan (May 23, 2012), the agency has a growing structural deficit. Director Larry Allen rejected this comment on the grounds that the agency has a reserve. We attempted to explain that a structural deficit is a condition in which the forecasted expenditures at the current level of service exceed the forecasted revenues over a period of future years. The existence of a reserve has no bearing on this condition. It was pointed out that the use of the onetime \$613,000 this year means that, all other things being equal, the next fiscal year will begin with a \$613,000 shortfall which will have to be addressed through service and staff reductions or increased fees and taxes.

The APCD Board simply blew the discussion off and adopted the Budget. They could have at least asked staff: if you had to take a \$613,000 reduction, where would you prioritize the least harmful cuts?

Planning Commission Meeting of Thursday, July 26, 2012 (Completed)

New Restrictions on Non-Agricultural Development in the Paso Robles Water Basin.

The proposed ordinance amendments, severely restricting new development in the North County, were approved by the Commission on a 4-1 vote (Murphy in the negative) after a 7 hour and 48 minute meeting. The approval constitutes a recommendation to adopt the ordinance amendments. As the song says, “this is just another brick in the wall”.² If the Board of Supervisors ultimately adopts the ordinance, it will short circuit a variety of groups which the County created to work on solutions.

The Commission was pushed hard by its Planning staff, led by Arch-Planner James Caruso, who displayed his usual arrogance and impatience with the Commission questions. Questions from the public about the existence of a deeper underlying aquifer, the financial impact on restricting currently permitted development (how banks will view loans etc.), and the convoluted “used water rule” (see below) were largely ignored.

Background: This is the result of the carefully orchestrated and relentless process by which the Paso Water Basin has been certified by the Board of Supervisors as Level of Severity III shortage (being close to or in overdraft). The cities and unincorporated towns inside the urban reserve lines (URL’s) are exempt because they have contracts to receive Nacimiento Lake project water. Agriculture is exempt for agricultural purposes as defined in the ordinance. Overall, the ordinance would clamp down hard on discretionary (requiring a land use permit) non-agricultural development.

Some key provisions:

- The staff report says that it does not affect 1500 lots that already exist. The problem is that other adopted and pending ordinances, such as landscaping, green building, growth management, transfer of development credits (TDC’s), agricultural cluster subdivision ordinance, and growth management, will engender separate barriers to developing the supposedly exempt existing parcels.
- As potential future supply and competition are restricted, prices may go up.
- Used Water Rule: Requires now discretionary development to offset new net water demand for non-agricultural purposes. The definition of water used for non-agricultural purposes is very restrictive and perhaps both logically and physically impossible to achieve. The ordinance defines it as “water that has never been used, whether onsite or offsite, for an agricultural activity.” Since a good deal of agricultural water percolates back into the ground and recharges the basin, will the county say all water or most water is used agricultural water?
- Prohibits general plan amendments that would result in a net increase in the use for non-agricultural purposes until a level I Severity (Level of Service) is certified by the Board of Supervisors. Staff should explain under what theories and circumstances they could foresee this happening.

² *The Wall*, Studio Album by the English progressive rock group Pink Floyd, 1979

- Remember, the County already has a policy that surface water such as Lopez Lake water and Nacimiento Lake water can only be used in urban areas (inside urban and village reserve lines). This would seem to prohibit using such water (including California Project Water?) when it is in surplus for recharging the Paso Robles Basin aquifer. Since there are 6000 acre-feet of Nacimiento water not being used, could it be used (and paid for) for recharge? In wet years, when the lake is full, it goes down the river and ultimately into the Pacific Ocean.

**San Luis Obispo County Council of Governments (SLOCOG)
Meeting of Wednesday, August 1, 2012(Scheduled)
8:30 AM 1055 Monterey St.**

Regional Housing Need Allocation (RHNA). Because California and its cities and counties have accumulatively adopted so many convoluted land use regulations, affordable housing (even during the current housing depression) has become prohibitively expensive. Moreover, builders can survive better by constructing large expensive houses. In usual fashion, when the impact of the regulatory free market distortions were felt, the State legislature came up with a mandate requiring each city and county to adopt a plan to provide zoning (not necessarily build) for a stipulated number of housing units per year (the RHNA numbers – pronounced “reena”). Every 5 years the State Housing and Community Development Department (HCD) reviews the problem and assigns a number to each council of governments (ours is SLOCOG). For this cycle, (2014 -2019), the State has set the number at 4,090 for SLOCOG. SLOCOG in turn must divide the numbers up among the seven cities and the unincorporated County. Jurisdictions that fail to meet their RHNA quota are subject to State penalties, such as the withholding of transportation funds and are vulnerable to developer and activist group law suits overturning local zoning decisions.

During the August 1, 2012 meeting, SLOCOG will begin the process of allocation among the jurisdictions. Savvy jurisdictions try to keep their assigned number (especially for affordable housing) low because failure can mean costs and penalties, as note above.

What is different now is that this process will be linked by SLOCOG, the California Air Resources Board (CARB), and the APCD to the SB 375 CO2 reduction mandates. The CO2 reduction goals and rules will be used to forestall single-family freestanding home development and rural development and to promote the “ smart growth densification scheme.” It will also be used to drive anti-car and pro-mass transit schemes. SLOCOG is working on a Plan called the Sustainable Communities Strategy (SCS), which will integrate transportation, environmental, and housing mandates into a more powerful tool to undermine free markets, free choice about where and how to live, and private property.

Deep Intelligence: It has been reported that one of the reasons Nipomo Service District Board member Mike Winn is resigning is to clear the decks for a run at 4th District Supervisor Paul Teixeira in 18 months. Left operatives want to take the Board back and are beginning to orchestrate their support.