

# Transcript of discussion

East County Board of Zoning Adjustments

October 26, 2017

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## 1. **DISCUSSION OF RULES AND PROCEDURES GOVERNING CODE ENFORCEMENT, INCLUDING ENFORCEMENT AUTHORITY AND CONDUCTING PUBLIC HEARINGS**

**Presented by County Counsel**

Heather Littlejohn, County Counsel's Office, with a powerpoint, discussed the following: Code Enforcement Procedures, General Rules & Responsibilities; Enforcement Authority; Enforcement Process; Administrative Remedies; Fines; Public Hearing Basics; Evidence, Findings & Decision; Fairness, Transparency and Due Process. A discussion followed.

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(25 min; 30 sec)

Frank Imhof, Chair: Hey, Rodrigo, it seems to be a problem in the county, seems to be, that every time you turn around someone's dumping dirt in a canyon somewhere. Now isn't that—we're talkin' about weeds and fences—that should be a code enforcement violation, right?

Rodrigo Orduña, Asst Planning Dir: Right, and this is part of the issue and what the rules state: Somebody who provides dirt on private property for the purpose of agricultural activity is exempt from the grading ordinance. So this extends—there's various jurisdictions playing here. If you don't need a grading permit, then you could in theory move dirt from outside your property onto your property or within your own property, move dirt around for agricultural purposes, and it would not need a grading permit. The other issue is whether or not the dirt constitutes degradation of the property, and in a large piece of property that's difficult to determine because it's not necessarily about the traffic generated, but it's about degradation of the property. So, in working with other departments if the portion of the property that's being graded does not affect the creek does not affect other structures, does not affect slope stability, and it's a two-acre portion of a 100 acre parcel, is that property degradation? So staff

is actually working internally to try and figure out ways to modify the ordinances so that we can actually regulate. However we don't want to modify the ordinances is too much, such that we enforce legitimate grading on property In which situation, all of a sudden everybody would need a grading permit to move some dirt on their huge parcel in an agricultural.

Mr. Imhof: Well, when you say huge parcel, you're talkin' 100 acres, right, 'cause most of Measure D is on 100 acre parcels?

Mr. Orduña: Mm hmm, yes.

Mr. Imhof: Person fills dirt on 20 acres of a 100, that's probably a little bit too much. That's 25%. . .

Heather Littlejohn, Office of the County Counsel: This is a great opportunity to revisit those findings that have to be made, So, Rodrigo if staff were to bring a potential enforcement action on an illegal dumping or grading, not grading but a neighborhood preservation ordinance violation based on someone dumping dirt. It would not be enough to say someone dumped dirt on a parcel, therefore it's a code violation. You'd have to make that link to what is the law, that says you can't do that.

Mr. Imhof: That's what you're doing, right.

Ms. Littlejohn: And what's happened, so. . .

Mr. Imhof: That's what we're doing. That what we're kinda working towards, and I think this is if you live in... If you see the parts of the county that I see, you would be. . . I was on a piece of property the other day, and I looked over a canyon. And, I just couldn't believe it. I just, I called my wife up, and she took pictures. They're putting dirt on top of a mountain, and pushing it off. And, we're not talking 10 truckloads [100–140 cubic yards]. We're talking a truck every 30 seconds. But that's my point: it's out of control. So, someone needs to work on this.

Mr. Orduña: Yes, and perhaps that's... we've developed a staff task force to talk about it, whether you, as a citizen of the county, would want to be on that. We could discuss that.

Mr. Imhof: Absolutely, the other question, I'm not against doing it, but, I mean, if I go and build a pad in Union City, I gotta have a soils report, I got to have this. I got to have all these things done. I got to have October 15th it shuts off. We gotta have it hydroseeded, we got to have erosion control. We have to meet all these requirements for Regional Water Board. Today's the 26th? There's 150 trucks dumping still dumping dirt up on top of this mountain, on this hill, and all the water in East County goes down one place. It's the Alameda Creek. Eventually, that's where it goes. . .

Mr. Orduña: So, so, so yes. Perhaps we could talk about it outside of the discussion on procedures, but we're trying to get at our colleagues outside of the county and at the state level to help us enforce that.

Mr. Imhof: Just a little bit more history. Hold on, Scott. (He's over here, wanting to talk.) Here's where this problem was created. The quarries, in the day, used to receive all dirt. They would take dirt fill the holes in. Freeway jobs would take the dirt to build the overpasses. We're not building no freeways. We're not filling the quarries in, so now we have all these job sites that all have dirt, and there's nowhere to go with it. Nowhere. So, that's where the problem is created. So, anyway, that's all I have, and I think we need to start working on that—promptly. Go ahead Scott.

Scot Beyer, committee member: Well if you do an NRCS project, soil conservation you know a pond soil restoration job or anything like that there's, that's regulated, there's also a time of year when you can do it. But, everything has to be, when you're completed, all your erosion control, everything has to be done. And, I guess the other question is, even in ag, isn't if you're gonna move "x" number of yards of dirt, isn't there a limit before you have to get it [a grading permit]?

Mr. Orduña: No.—So, we've discussed this with our colleagues in the grading Department. And in order to require that NRCS and all that other sorts, a grading permit is issued on the tract that... We've gone over talk to folks about what kinds of permits would be necessary, and what we keep getting told is that grading for agricultural purposes is exempt. . . And what we keep talking back to them about is, well okay well fine, okay well help us out. this is well you're the expert grading, you're the expert Clean Water, you're the expert Fish and Wildlife, you're the expert, etc. There's got to be effects to the critters. There's got to be effects to the creek. There's got to be a effects to the water table. There's got to be a effects to some... And, we keep getting told—not my jurisdiction.

Ms. Littlejohn: I think a really important component of this conversation is what Rodrigo just mentioned. And that has to do with, for the purposes of the Board of Zoning Adjustments, the types of enforcement actions that you can take are based on that list of ordinances that create potential violations. So, these other types of ordinances, you don't have enforcement authority over. So, you can't issue an order to comply with the grading Ordinance or with the State Clean Water Regulations. So, um...

Mr. Orduña: So, who does?

Ms. Littlejohn: Well, those other agencies. But, there are provisions within some of our ordinances that you do have authority over, for example, the neighborhood preservation ordinance that include various types of provisions that may or may not be applicable in a circumstance like what you're describing. And that's why it's so important at the time of a hearing like that, that you're able to look at

what the specific provision is, and to see if it matches up. If the provision says, "No dumping more than 10 tons of dirt," and there's evidence that they've dumped 20, then that's potentially you know an easier decision to make. But, if it's not that clear, with a numerical system you know you're really going to have to, you're really going to have to make those reasoned findings that establish why whatever evidence you are seeing constitutes a violation of an ordinance. And that's gonna have to be done on a case-by-case basis, with, you know, with the evidence in front of you, and with the exact regulation in front of you. It's a little hard to have this conversation more hypothetically, and it's also probably not something that we should do in the absence of an actual case. But I think it is important to help highlight what is and what isn't in the neighborhood preservation ordinance, and to kind of nail down what these processes are.

Mr. Imhof: Part of the problem, there's a two-part question here, is I get phone calls from people complaining. So then, okay, I'll bring it to my community preservation officer or code enforcement and tell him. That's all I can do. If that, nothing happens, I get another five phone calls, I take it to Supervisor Haggerty's office. I'm finding it real hard to believe that I have, and I might be way wrong here: I'm having a decision-making process over an eight-foot [high] fence and a four-foot fence. But, I don't have any decision process over a half a million yards on a piece of ground that is going into the Alameda Creek. That's a real problem. And I'm gonna go about, somehow, I'm gonna probably change that. And, I might be overstepping my bounds.

Ms. Littlejohn: I do want to clarify that, I'm not trying to say that the hypothetical case you're describing is not a violation of the neighborhood preservation ordinance. I'm not saying that at all. I'm just saying it may or may not be, and your job will be to evaluate the evidence without preconceived decisions, and with taking into account what the actual law says. Because, we don't have it in front of us right now, so it's just a caution. It's just a caution, so I want to make sure that...

Mr. Imhof: You're right, you're right, because I'm leveling a piece of ground right now in Sunol, and my tolerance is an inch and a quarter every 100 ft. So this field, every 100 ft has fallen an inch and a quarter.

That's grading. People could call that grading. An agricultural guy in Salinas would call that, you're just lampooning that piece of ground, you're just getting us out of that. That ordinance about agricultural grading means you can lose some dirt and not get a permit. I understand that, not—this.

Mr. Orduña: Right, so so, at staff I think the optimal thing is modifying those ordinances to require permits. Again we're, that's what we're trying to do. We just need to make to make sure that it's not just code enforcement who wants that change.

Mr. Imhof: I understand.

Mr. Orduña: To the grading permits...

Mr. Imhof: So so so, Rodrigo, I'm putting it upon you to march forward with this. If we need to have Mr. Bazar come here, or whoever, we can have a . . . we'll have a big sit-down. Or, I'll call Chris [Bazar] myself, or whoever. But, this is, I'm telling you guys: it's out of control. Because, this dirt's coming from San Francisco and San Jose. I mean, I'm getting the word that contaminated dirt is \$500 a load [10–14 cu yards], and good dirt is \$200 a load. And, there going to take it anywhere in Alameda County. It's a done deal. So, anyway, Scott?.

Mr. Beyer: Well it seems pretty much answered. I mean, they don't have an ordinance. I mean, it's not ag dirt. It's construction waste product that's being dumped on ag, whatever the pollution is. . .

Mr. Imhof: Look we have a member in the audience. If I open the public hearing here, are you here to speak?

Audience member: No, I'm here to enjoy.

Mr. Imhof: Rodrigo, do you have anything else?

Mr. Orduña: So, I've heard you. I will redouble efforts with Chris, and the head of Public Works Agency and Environmental Health to make sure that we modify these rules to regulate grading.

Mr. Imhof: And, I'll tell you what. We could, if everybody wants to have a tour, we'll have a little short tour in the valley of Sunol, and I could show you two different grading processes. It wouldn't take more than an hour. Um, anything else?

# Tentative hearings on proposed ordinance

Diversion or dumping of earthen material

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March 20, 2019	Sunol Citizens Advisory Council,
April 2, 2019	Fairview Municipal Advisory Council
April 23, 2019	Agricultural Advisory Committee
May 6, 2019	Planning Commission
May 7, 2019	Transportation and Planning
May 14, 2019	Board of Supervisors

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