

Public Comment #3
BOS Recd. 6-12-23

From: Cheryl Bly-Chester <cherylblychester@aol.com>
Sent: Monday, June 12, 2023 3:50 PM
To: Kim Dawson; BOS-Clerk of the Board; BOS-District I; BOS-District II; BOS-District III; BOS-District IV; BOS-District V
Subject: Comments BOS Meeting June 13, 2023, Item #3

Board of Supervisors [Agenda Date: June 13, 2023]

Comments on Agenda Item 3 - Long Range Planning Mid-Year 2023 Update and Proposed Project Work Plan for Fiscal Year 2023-24

The first recommendation is that items 1 and 2 be moved down in priority because they are not going to be completed until April 2024. The next two items 3 and 4 need to be moved up in priority to be placed in the first and second priority as they are both required to be completed this Fall, before the end of the year.

The second recommendation is for County Staff to exert a significant amount of effort towards current Priority Item Number 4.

Priority 4. Pre-Approved Accessory Dwelling Unit (ADU) Plan Program: Development of permit-ready ADU building plan. The ADU plan program is projected to encourage the construction of ADUs by offering property owners a pre-approved ADU building plan and optional facades. Project funded by approximately \$110,040 in grant funds from the State Senate Bill 2 (SB2) Planning Grants program awarded to the County by the State Department of Housing and Community Development in December 2019. All activities must be completed and grant funds expended by December 2023. Target Completion by Summer 2023. A Phase II project is anticipated and LEAP funds were awarded to cover the costs, however delays in the Phase I project may impact the use of these funds. Staff will seek any extensions possible to fulfill the Phase II project.

It appears that the County is very far behind on fulfilling the task or even understanding the Accessory Dwelling Unit laws and the County Ordinance, which State public funds were granted to address. Even now, 3½ years after being given the State grant, the El Dorado Planning and Building Department Director does not understand the ADU laws and is refusing to perform her mandatory duties with respect to the ADU laws. Worse, the Department still can't understand their ministerial duties or interpret their own ordinance without repeatedly seeking advice from the County Counsel's Office.

The State law requires that for all ADU permits, the County has no ability to extend a review beyond 60 days. At 60 days, if the permit is not denied, it is deemed approved by state law. Government Code 65852.2. (3) (A) clearly reads:

"A permit application for an accessory dwelling unit or a junior accessory dwelling unit shall be considered and approved ministerially without discretionary review or a hearing." ... And: "If the local agency has not approved or denied the completed application within 60 days, the application shall be deemed approved."

And,

Per page 7 of the ADU Handbook authored by the State Housing and Community Development, Assembly Bills 68, 881, Senate Bill 13 (2019):

"Reduces the maximum ADU and JADU application review time from 120 days to 60 days. (Gov. Code, § 65852.2, subd. (a)(3) and (b))."

According to Ciani v. San Diego Trust & Savings Commission, 233 Cal. App. 3d 1604, 1613, 285 Cal. Rptr. 699, 705 (1991):

"A deemed-approved permit confers the same privileges and entitlements as a regularly issued permit."

Therefore, an application on a qualifying property for an ADU that the County staff declares complete on May 19, 2022 is deemed approved on July 18, 2022, if it is still under active review by the county staff and has not been denied.

My ADU Permit 354396 has been under active review for 390 days and has not been denied, By state law, it was deemed approved on the 60th day, but Director Karen Garner, on repeated advice of County Counsel, has refused to do her duty to recognize the permit approval.

Furthermore, Director Garner has stated before witnesses, that she believes the County Staff can read and interpret the County ADU Ordinance so that two Staff members can arrive at completely different measurements of what is and is not included in the square footage measurement of an ADU. However, Government Code section 65852.150 requires the County Ordinance to not be subjective, but rather use only objective standards so that the permits can be reviewed ministerially. The State ADU Handbook defines impermissible subjective standards as:

"Subjective standards require judgement and can be interpreted in multiple ways" (ADU Handbook pg.12).

By claiming that square footage can be interpreted by her staff in multiple ways, she is invalidating the County Ordinance and placing the County in jeopardy of having the State withdraw approval of the ordinance per Gov. Code, § 65852.2, subd. (h)(2), which authorizes HCD to notify the local agency if HCD finds that the local ADU ordinance is not in compliance with state law.

The State has already notified Karen Garner that the Ordinance may not be in compliance with state law and directed her to read the requirements for the County Ordinance as described in page 12 of the ADU Handbook.

If the Director and County Counsel do not understand the State ADU Laws, then no matter what priority this item is placed under in the long-range planning, it cannot be accomplished in time to meet the deadline and accounting for the use of the state funds may be subjected to state scrutiny.

Of course, we believe that my ADU permit 354396 is intentionally not being recognized as further retaliation by the County Counsel's Office on behalf of the Board of Supervisors for my filing a whistleblower complaint implicating the County Counsel's Office in committing, aiding, and abetting violations of state law. If that is not the case, then the Board of Supervisors should direct the Staff to clear the permit for building and direct the Staff to put in place policies that require strict adherence to state law, especially the timeliness of approving permits and assigning only those qualified on the Building Codes the task of measuring square footage of ADUs.

Sincerely, Cheryl Bly-Chester,
Resident District 2