

**MARIPOSA COUNTY
BOARD OF SUPERVISORS**

**AGENDA
ACTION FORM**

DATE: 12/11/01
AGENDA ITEM NO.: # 6

DEPARTMENT: County Counsel

BY: Jeffrey G. Green

PHONE: 966-3222

RECOMMENDED ACTION AND JUSTIFICATION: (Policy Item: Yes___ No___)

PUBLIC HEARING: Appeal of County Counsel's decision relative to the Appeal of Ordinance No. 934 of the Planning Director's Determination; Mark Chapman, c/o Attorney Jamison, appellant.

BACKGROUND AND HISTORY OF BOARD ACTIONS:

LIST ALTERNATIVES AND CONSEQUENCES OF NEGATIVE ACTION:

COSTS: () Not Applicable
A. Budgeted current FY \$ _____
B. Total anticipated costs \$ _____
C. Required additional funding \$ _____
D. Internal transfers \$ _____

SOURCE: () 4/5ths Vote Required
A. Unanticipated revenues \$ _____
B. Reserve for contingencies \$ _____
C. Source description: _____
Balance in Reserve for Contingencies, if approved: \$ _____

SPECIAL INSTRUCTIONS:
List the attachments and number the pages consecutively:
staff Report from Co. Counsel w/ attachments

CLERK'S USE ONLY:
Res. No.: 01-251 Ord. No. _____
Vote - Ayes: 4 Noes: _____
Absent: Stewart Abstained: _____
Approved: _____ () Denied _____
Minute Order Attached () No Action Necessary

The foregoing instrument is a correct copy of the original on file in this office.
Date: _____
ATTEST: MARGIE WILLIAMS, Clerk of the Board
County of Mariposa, State of California
By: _____
Deputy

ADMINISTRATIVE OFFICER'S RECOMMENDATION:
This item on agenda as:
____ Recommended
____ Not Recommended
____ For Policy Determination
____ Submitted with Comment
____ Returned for Further Action

Comment: _____

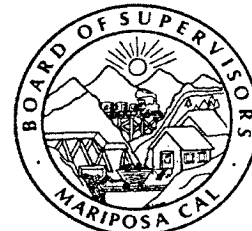
A.O. Initials: JG



COUNTY of MARIPOSA

P.O. Box 784, Mariposa, CA 95338 (209) 966-3222

DOUG BALMAIN, CHAIRMAN	DISTRICT II
ROBERT C. STEWART, VICE-CHAIRMAN	DISTRICT III
PATTI A. REILLY	DISTRICT I
GARRY R. PARKER	DISTRICT IV
BOB PICKARD	DISTRICT V



MARIPOSA COUNTY BOARD OF SUPERVISORS

MINUTE ORDER

TO: JEFF GREEN, County Counsel

FROM: MARGIE WILLIAMS, Clerk of the Board *MW*

SUBJECT: Appeal of County Counsel's Decision Relative to the Appeal of Ordinance No. 934 of the Planning Director's Determination; Mark Chapman Resolution No. 01-351

THE BOARD OF SUPERVISORS OF MARIPOSA COUNTY, CALIFORNIA,

ADOPTED THIS Order on December 11, 2001

ACTION AND VOTE:

Jeff Green, County Counsel;

PUBLIC HEARING: Appeal of County Counsel's Decision Relative to the Appeal of Ordinance No. 934 of the Planning Director's Determination; Mark Chapman, c/o Attorney Jamison, Appellant

BOARD ACTION: Jeff Green provided the staff report and responded to a question from the Board relative to the Board's determination in another appeal relative to reducing sewage flow amounts and whether that is related to this appeal.

Public portion of the hearing was opened. Input was provided by the following:

John Jamison, Attorney at Law and representing the appellant, stated he agrees with County Counsel that there needs to be some determination relative to the intent of Ordinance No. 934. He referred to the history of building and transient occupancy permits the appellant obtained, and of contact with the Tax Collector's office in 1994, to find out if anything else was required. He stated he feels the Ordinance addresses the addition of flow to the sewer system. He stated he disagrees with the application of Section 3-B in the Ordinance to this situation – they do not have any new construction and they are not converting, they have used this facility as a rental since 1994 and they have been paying their transient occupancy taxes.

Jeff Green stated he feels it is the Planning Department's position that this is a conversion of a single family residence to a bed and breakfast, and that is the dispute. He responded to questions from the Board relative to the status of the issuance of permits by the County for this facility, and he advised that the use issue is the subject of a future appeal on this matter. He further explained the bifurcation of this appeal, and that if the Board determines that the intent of the Ordinance is only for an increase in the sewer flow, he feels any illegal transient rental operator could come to the Board for a permit.

Eric Toll, Planning Director, advised that in terms of the second part of the appeal issue, staff is recommending in support of the appeal based on information that has been provided by the appellant.

Jeff Green advised that based on the Planning Director's change in recommendation, the appellant doesn't have anything further to appeal to the Board. He responded to a question from the Board as to whether the Board still needs to make a determination on the intent of the Ordinance, and advised that he would like the Board to resolve the intent issue.

Attorney Jamison stated he is willing to withdraw the second portion of the appeal based on the Planning Director's input and allow the Board to make a decision on the intent issue.

Chairman called for input from the public in support or in opposition to the appeal. None was received.

Public portion of the hearing was closed and the Board commenced with deliberations. (M)Parker, (S)Reilly, Res. 01-351 adopted upholding Ordinance 934 as written, with the finding that the intent of the Board is that there shall be no transient occupancy or bed and breakfast permits issued, either for new construction or conversion from single family dwelling to rental; Section 3 is a stand-alone section and not conditioned upon flow issues/Ayes: Reilly, Balmain, Parker, Pickard; Excused: Stewart. Hearing was closed.

cc: Ken Hawkins, Auditor
Don Phillips, Tax Collector
Eric Toll, Planning Director
File



Office of the
County Counsel

M E M O R A N D U M

Date: November 28, 2001

To: Board of Supervisors

From: Jeffrey G. Green, County Counsel

Re: Appeal of Mark Chapman Dated August 29, 2001

This Appeal comes to the Board of Supervisors pursuant to a "Notice of Appeal" dated August 29, 2001. A copy of the August 29, 2001 Appeal is attached hereto marked Exhibit "A". The Appeal is requesting that the Board of Supervisors overturn County Counsel's decision that a portion of an Appeal filed by Mr. Chapman on August 17, 2001 was not timely filed. The original Appeal arose out of a request by Mr. Chapman to have a transient occupancy certificate issued for his property. At the time of the request one transient occupancy permit existed for the premises, however, it is the position of the Planning Department that other premises were being rented on another level of the residence without an appropriate permit. In the August 17, 2001 Appeal by Mr. Chapman one of the issues being appealed was Mr. Chapman's position that the transient rental being operated without a permit complied with the Board's Moratorium Ordinance No. 934 (erroneously described as Ordinance 834 in the August 17, 2001 appeal) in that the transient rental was being operated prior to the applicability of Ordinance No. 934. The specific language in the August 17, 2001 Appeal is as follows:

"In addition with respect to the property findings by the Planning Department regarding the applicability of Ordinance No. 934 are incorrect in that the uses as described in the Notice of Violation existed prior to the adoption of the Ordinance and the Ordinance is specifically tailored to address only an increase in sewer flow, not in existing condition."

Attached hereto and marked Exhibit "B" is a copy of Ordinance No. 934. Additionally attached hereto marked Exhibit "C" are the findings of the Planning Department relative to the applicability of Ordinance No. 934. The County's appeal process requires a review by County Counsel prior to the appeal being placed on the Board's agenda. Upon a review of the August 17, 2001 Appeal of Mr. Chapman, County Counsel determined that the portion of the Appeal relative to Ordinance No. 934 was not timely filed in that the Ordinance was not challenged at the time it was adopted and further that Ordinance No. 934 did in fact apply to the finding by the Planning Department as above stated. Upon making the determination that that portion of the Appeal was not timely filed, County Counsel forwarded a letter to Mr. Jamison dated August 29, 2001 explaining Counsel's position relative to his decision. A copy of the letter dated August 29, 2001 is attached hereto marked Exhibit "D". Counsel for Mr. Chapman forwarded a letter in response to County Counsel dated September 10, 2001. A copy of the September 10, 2001

letter is attached hereto marked Exhibit "E". Upon receipt of the September 10, 2001 letter from Attorney Jamison, County Counsel responded to that letter on September 11, 2001. A copy of the letter of County Counsel of September 11, 2001 is attached hereto marked Exhibit "F".

It is County Counsel's position based upon the wording in Ordinance No. 934, Section 3-B that that section is a stand-alone section. The introduction to Section 3 "Restrictions" states as follows, "During the effective period of this Ordinance and continuing until formal action is taken by the Mariposa County Board of Supervisors, the following **shall be implemented.**" The language contained therein is "**shall be implemented**" and Section 3-B states "There shall be no bed and breakfast or transient occupancy permits issued, either for new construction or conversion from single family dwelling to rental." Again, Section 3-B uses the word "shall". It is County Counsel's position that based upon the Board's discussions surrounding the adoption of Ordinance No. 934 and the plain language of the mandatory provisions of Section 3 that no bed and breakfast or transient occupancy permits shall be issued during the moratorium. The logical conclusion of Mr. Chapman's position is that a property owner who was operating a transient rental prior to the adoption of Ordinance No. 934 without a valid transient occupancy permit would be entitled to a transient occupancy permit because there would be no additional flow into the sewer system. Of course this argument rewards an individual illegally operating a transient occupancy rental. County Counsel believes that it was the intent of the Board of Supervisors upon adoption of Ordinance No. 934 to prohibit the issuance of transient occupancy permits during the Moritorium. Counsel further believes that the plain language of Ordinance No. 934 prohibits the issuance of a transient occupancy permit based upon an allegation that an operation existed prior to adoption of Ordinance No. 934 when there is no record of an occupancy permit being issued prior to the adoption of Ordinance 934.

Upon resolution of the Appeal currently before the Board of Supervisors the balance of the Appeal of Mr. Chapman filed on August 17, 2001 will be heard by the Board.

rs

Attachments

cc: Greg Iturria, CAO w/attachments