

NEVADA COUNTY BUILDING DEPARTMENT DOLLARS AND SENSE

Summary

The Nevada County Civil Grand Jury, in the process of investigating citizen complaints, found inconsistent application of local policies and the Land Use and Development Code within the Nevada County Building Department. These inconsistencies involved the issuance of permits, extension of permits and fees charged. The Jury determined that the failure to charge applicable fees resulted in an unjustifiable, and perhaps significant loss of revenue.

In their response to the 2008-2009 Grand Jury report, the Nevada County Board of Supervisors emphasized the fact that the Building Official has the authority to assess penalty fees in cases where work has begun without a permit, but did not wish to make the penalty fees mandatory. The current Jury, after reviewing a number of cases, found that penalty fees were not applied, and there is no trackable explanation. The Jury believes that it makes sense to revise the LUDC to make the assessment of penalty fees the rule rather than the exception.

Reasons for Investigation

The Nevada County Civil Grand Jury (Jury) issued a report during the 2008-2009 term entitled “County Code Enforcement – A Continuing Concern”. The response to that report, prepared by the Board of Supervisors (Board), stated that several of the recommendations made by the Jury were to be implemented by the Building and Planning Departments of the Community Development Agency (CDA) within one year. The current Jury followed up on those recommendations to ensure that they had, in fact, been implemented.

In addition, the current Jury received several citizen complaints regarding fee and permit procedures in the Building Department, especially involving construction without applicable permits, and determined that further investigation was warranted.

Background

The Building Department (Building) and the Planning Department (Planning) are components of the CDA, which is an umbrella agency for several departments: Building, Planning, Environmental Health, Housing and the Agricultural Commissioner.

Building is considered to be a Special Revenue Fund. It is funded primarily by fees collected, and receives minimal General Fund money for operations.

Building reviews construction plans, issues construction permits, assesses fees and conducts required inspections to ensure that construction is done properly, in accordance with all applicable codes. Inspections are performed when the permit holder notifies Building that a particular phase of the construction is ready for an inspection. Building also works with property owners to resolve code violations found by the Code Compliance Division.

The Code Compliance Division (Code) is not a Special Revenue Fund. It is funded primarily by the General Fund.

Code is a division of the Planning Department. It responds to and investigates written complaints received from County residents with regard to perceived violations of the Land Use and Development Code (LUDC), and any other County codes relating to land use. Code Enforcement Officers can also open an investigation if they observe construction being performed without a valid building permit.

According to LUDC Sec. L-V 2.8 Section 105.5, building permits for elevations below 5,000 feet are valid for a period not to exceed 180 days. Any completed inspection required by the permit extends the permit for six months from the date of the inspection. Within six months following the expiration date of the permit, the permit holder, with payment of applicable fees, can reopen the permit. If the period exceeds six months, the applicant must apply for a new permit, and pay new fees. For elevations above 5,000 feet the applicant is allowed one year.

Building maintains a set of policies on its web page to aid and assist property owners and contractors with the permit process.

Building Department Policy BD-CSC-07-006 states “As-built construction is defined by the Building Department as construction of a structure or building without permits or the benefit of inspections.”

To legalize an un-permitted (as-built) building or structure, the following are required:

- A completed permit application
- A site plan
- A set of plans which describe how the structure was built (as-built plans)
- Payment of applicable Building Department fees, which may include penalties
- Payment of other applicable agency fees
- Inspections
- Final approval

According to the LUDC Sec. L-V 2.13 Section 108.4, applicable fees “may be increased by the Building Official but shall not be more than double the fees specified for obtaining the permit for the first violation and not more than fourfold the fees specified for obtaining the permit for a second or subsequent violation by the same individual. The payment of such fee shall not exempt an applicant from compliance with all other provisions of either this code or the technical codes in the execution of the work nor from penalties prescribed in Sections L-I 1.7 and L-V 2.3 of the Land Use and Development Code.”

Procedures Followed

The Jury interviewed the complainants, reviewed the information they supplied and reviewed the 2008-2009 Jury report. The Jury interviewed County staff and managers in the CDA in an effort to get a complete and accurate understanding of the way Building and Planning function.

The Jury requested, obtained and studied files kept by both Code and Building regarding the properties that were the subjects of the complaints received by the Jury. The complainants had given permission to the Jury to disclose property addresses involved in the complaints to the Departments in order to verify specific information. This information was provided to Building and Code.

The Jury also reviewed sections of the LUDC and procedural documents provided by the Departments.

Findings

The LUDC allows the Building Official to impose penalty fees for permits issued for as-built construction.

- F.1.** The LUDC allows the Building Official to impose penalty fees for permits issued for as-built construction. As-built permits reviewed by the Jury were issued without applicable penalty fees.
- F.2.** Building is not required to document why penalty fees are not imposed.
- F.3.** As-built permits reviewed by the Jury were issued without required plans.
- F.4.** The Building computer system generates a letter when a permit is about to expire. This letter is sent to the permit holder. If there is no response, the permit is allowed to expire.
- F.5.** If a permit was originally opened as a result of a Code Compliance investigation, and the permit expires, the Code Enforcement Officer reopens the case.
- F.6.** Owner initiated permits for as-built construction are allowed to expire without further investigation.
- F.7.** Building permits were extended without payment of applicable fees.

- F.8.** At the time of the Jury investigation, Policy BD-CSC-07-009 was shown on the Building web page with an effective date of January 30, 2007. This policy is in conflict with State Building Codes effective January 1, 2008, which changed the length of a permit from one year to 180 days, except in areas above 5000 feet elevation.
- F.9.** The following recommendations from the 2008-2009 Jury report on Code Compliance have been implemented:
- Nuisance Abatement Ordinance
 - Administrative Citation Ordinance

Conclusions

- C.1.** When building permits for as-built construction are issued without penalty fees, it
- results in reduced revenue
 - fails to send a message to offenders
 - is unfair to those who are required to pay penalty fees (F1, F2)
- C.2.** Lack of documentation to explain decisions regarding penalty fees leaves unanswered questions regarding fairness. (F3)
- C.3.** When building permits for as-built construction are issued without required plans, it increases the possibility of unsafe or illegal conditions. (F4)
- C.4.** When building permits (including as-built permits) expire without final inspection, code violations may exist, including the possibility that a safety hazard may be left unresolved. (F5, F7)
- C.5.** Inconsistent application of extension fees results in loss of revenue and is unfair to those who are required to pay. (F8)
- C.6.** Outdated policies on the Building web page, intended to provide guidance to applicants, cause confusion. (F9)

Recommendations

The Board of Supervisors should direct staff to:

- R.1.** Submit an Ordinance for Board approval, amending the LUDC Sec. L-V 2.13 Section 108.4 to read that applicable fees “shall be increased by the Building Official” rather than “may be increased by the Building Official”. (C1)

- R.2. Develop and implement a procedure for tracking permit penalty fees, which can be audited, including a detailed explanation as to why fee exceptions take place. (C1, C2)
- R.3. Develop and implement a procedure in which exceptions to permit processes and/or approvals are fully documented in order to provide evidence of equal treatment. (C1, C2, C3)
- R.4. Develop and implement a procedure in which the department is notified by the system when permits expire, so that manual review of the file can take place. (C4)
- R.5. Develop and implement a procedure for tracking “as built” permits to ensure that they are referred to Code after expiration. (C4)
- R.6. Develop and implement a procedure to ensure that applicable permit fees are applied consistently. (C5)
- R.7. Review all policies contained on the Building web page to ensure that they are in compliance with State and County Building Codes. (C6)

Responses

Nevada County Board of Supervisors, September 2, 2010

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STATE OF CALIFORNIA

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September 21, 2010

The Honorable Thomas Anderson
Presiding Judge of the Nevada County Grand Jury
Nevada County Courthouse
201 Church Street
Nevada City, CA 95959

Re: Board of Supervisors' revised responses to the 2009-2010 Nevada County Civil Grand Jury Report, *Nevada County Building Department – Dollars and Sense*.

Dear Judge Anderson:

In response to the letter dated September 9, 2010 from Grand Jury Foreman Diana Beer, the Board of Supervisors hereby submits its revised responses to the 2009-2010 Grand Jury report, "*Nevada County Building Department – Dollars and Sense*," as approved at its regular meeting September 21, 2010.

The Foreman's letter informs Chairman Beason that the Board's response does not comply with Penal Code Section 933.05, but does not specify which response(s) were out of compliance. Staff contacted the Grand Jury Foreman and confirmed that the Response to Recommendation B.4 needed to include a specific date for implementation. Also, in reviewing the response to Recommendation B.1 on page 2, the response begins with "Disagree" instead of "The recommendation will not be implemented." Both corrections have been made, and the revised Responses are submitted herewith.

Sincerely,

Nathan H. Beason
Chairman, Board of Supervisors

cc: Diana Beer, Foreman, Grand Jury
Rick Haffey, County Executive Officer
Steven DeCamp, Community Development Agency Director

NEVADA COUNTY BOARD OF SUPERVISORS *REVISED* RESPONSES TO
2009-2010 CIVIL GRAND JURY REPORT
DATED JUNE 4, 2010:

NEVADA COUNTY BUILDING DEPARTMENT
DOLLARS AND SENSE

Responses to findings and recommendations are based on either personal knowledge, examination of official county records, review of the responses by the County Executive Officer, the Community Development Agency Director or testimony from the Board of Supervisors and county staff members.

A. RESPONSES TO FINDINGS

- 1. The LUDC [Nevada County Land Use and Development Code] allows the Building Official to impose penalty fees for permits issued for as-built construction. As-built permits reviewed by the Jury were issued without applicable penalty fees.**

Agree.

- 2. Building is not required to document why penalty fees are not imposed.**

Agree.

- 3. As-built permits reviewed by the Jury were issued without required plans.**

Agree.

The 2007 California Building Section 106.1 Exception allows the Building Official to waive the submission of construction documents and other data if it is found that the nature of the work applied for is such that review of construction documents is not necessary to obtain compliance with the Code.

- 4. The Building computer system generates a letter when a permit is about to expire. This letter is sent to the permit holder. If there is no response, the permit is allowed to expire.**

Agree.

- 5. If a permit was originally opened as a result of a Code Compliance investigation, and the permit expires, the Code Enforcement Officer reopens the case.**

Agree.

6. Owner initiated permits for as-built constructions are allowed to expire without further investigation.

Disagree.

Expired permits are reviewed and permits for as-built construction are sent to the Code Compliance Division of the Planning Department for investigation.

7. Building permits were extended without payment of applicable fees.

Agree.

8. At the time of Jury investigation, Policy BD-CSC-07-009 was shown on the Building web page with effective date of January 30, 2007. This policy is in conflict with State Building Codes effective January 1, 2008, which changed the length of a permit from one year to 180 days, except in areas above 5000 feet elevation.

Agree.

9. The following recommendations from the 2008-2009 Jury report on Code Compliance have been implemented:

- Nuisance Abatement Ordinance
- Administrative Citation Ordinance

Agree.

B. RESPONSES TO RECOMMENDATIONS

1. Submit an Ordinance for Board approval, amending the LUDC Sec. L-V 2.13 Section 108.4 to read that applicable fees “shall be increased by the Building Official” rather than “may be increased by the Building Official”.

The recommendation will not be implemented.

The Building Official must have the ability to impose or not impose increased fees based upon a case by case review. There are times that a property owner has purchased a property with violations performed by the previous owner. If the new owner wishes to bring the property into code compliance, the new owner should not be charged a penalty for this corrective action. The Building Official must have the flexibility to ensure reasonable application of the Code.

- 2. Develop and implement a procedure for tracking permit penalty fees, which can be audited, including a detailed explanation as to why fee exceptions take place.**

The recommendation will be implemented within one year.

The Building Department will prepare a policy and procedure to include an explanation of fee exceptions attached to the specific permit number.

- 3. Develop and implement a procedure in which exceptions to permit processes and/or approvals are fully documented in order to provide evidence of equal treatment.**

The recommendation will be implemented within six (6) months.

A protocol will be developed and implemented to document exceptions to permit processes and/or approvals within each building permit file.

- 4. Develop and implement procedure in which the department is notified by the system when a permit expires, so that manual review of the file can take place.**

The recommendation has been partially implemented and will be fully implemented on June 30, 2012.

The Building Department computer system has the ability to compile and print a report identifying all expired permits.

Current staffing levels in the Building Department are not sufficient to allow manual review of all expired permits. This recommendation will be implemented when the economy recovers and staffing levels reach a practicable level to support manual review of all expired permits, by June 30, 2012.

- 5. Develop and implement a procedure for tracking “as-built” permits to ensure that they are referred to Code after expiration.**

The recommendation will be implemented within one year.

6. Develop and implement a procedure to ensure that applicable permit fees are applied consistently.

The recommendation has been previously implemented.

The Building Department computer system generates all fees for each permit included in the Fee Schedule adopted by the Board of Supervisors. This computer program generates all fees for each permit.

7. Review all policies contained on the Building web page to ensure that they are in compliance with State and County Building Code.

The recommendation is being implemented and will be completed within one year.