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LAND USE

COUNTY MISSING OPPORTUNITY TO COLLECT REVENUE

BACKGROUND

The Resource Management Agency (RMA) was created in 1996 by combining the Planning and Development Department, the Public Works Departments, Community Development/Redevelopment and Capital Projects Divisions. General Services were added in 1997. The mission of RMA is to coordinate these dissimilar activities to provide the appropriate balance of economic development, consistent with the need for a timely and predictable permitting process that also preserves private property rights. The Permit Center is the main hub for the public seeking information about building and land use permits, zoning and code compliance and abandoned vehicle abatement.

Building and Zoning Inspectors are responsible for enforcing the Tulare County Ordinance Code for all County land. RMA's Code Compliance takes in complaints and performs inspections/investigations involving violations of the Tulare County Ordinance Codes.

REASONS FOR INVESTIGATION

The 2009-2010 Tulare County Grand Jury received a complaint stating RMA Code Compliance failed to enforce zoning ordinances, code requirements and collect assessed fines and fees.

PROCEDURES FOLLOWED

1. Interviewed relevant witnesses.
2. Reviewed relevant documents.
3. Visited site of alleged violation.

FINDINGS

1. The AE-10 Zone, 10 acre minimum, is an exclusive zone for intensive agricultural uses and for those uses which are a necessary and integral part of intensive agricultural operations.
2. On October 10, 2008, a non-compliance notice was sent to a property owner stating, in part, the following:
 "A field inspection by a Code Compliance Officer on October 9, 2008, confirmed that your property is in

violation of Tulare County Ordinance Code and Tulare County Zoning Ordinance Code 352, as amended and described below:

1. Installation of a seatrain without a building permit or inspection as required by law.
2. Operating a trucking business in the AE-10 Zone without approval of a Special Use Permit.

Violation of the Tulare County Ordinance Code is a misdemeanor punishable by a fine of \$1,000.00 or imprisonment for 6 months in the County jail. Violation of the Tulare County Zoning Ordinance is an infraction with fines of \$100 per day, for each day the violation is allowed to continue. If the violation is corrected within 15 days of this First Notice, there will be no fees or fines assessed. If however, this violation is not corrected within 15 days or if you have not contacted this office to arrange an alternative compliance date within 5 days of this First Notice, you will be sent a 30 Day Notice to Abate and you will incur an Administrative Fee of \$270." (See fee schedule at end of report.)

3. On November 3, 2008, Code Enforcement sent an e-mail to a concerned adjacent property owner regarding the non-compliant property owner. It states, "...he will need to appear before an Administrative Hearing Officer to prove he is in compliance. If he is not in compliance, the fines and fees stick to the property. However, we usually will grant a contract for the time to remove the violation, but the fees of \$1050 stay with the property. If this case receives a Hearing Notice, the cost of any Use Permit will double in fees."
4. November 19, 2008, a 30 Day Notice to Abate Ordinance Code Violations was issued by RMA Code Enforcement. The notice makes reference to the October 10, 2008 non-compliance notice and cites the specific section of the ordinance and zoning code violations that informs the property owner of what they need to do within 30 days of the abatement notice. This notice stated:

"Violation 1 - Obtain a building permit and complete all inspections required by law or obtain a demolition permit, remove the seatrain and call for a final inspection.

Violation 2 - Submit a complete use permit application and full filing fees for a trucking business in the AE-10 Zone."

The notice also states that the property owner had already incurred a recovery cost of \$270 for failure to comply with the First Notice dated October 10, 2008. It goes on to state that if the property is not brought into compliance within 30 days of the date of this abatement notice, the matter would be placed on the Administrative Hearing Agenda and cost recovery fees in the amount of \$765 would be assessed along with a daily fine of \$100 per day, for each violation, from the date the notice was mailed.
5. On December 18, 2008, a Special Use Permit was submitted to RMA planning that was incomplete and not accepted. The Special Use Permit Application specifically states, "The application must be completed in every respect with all questions answered and all requested information provided before the County can officially accept the application for filing." As of May 19, 2010, the Special Use Permit Application has not been completed and/or approved.
6. On December 19, 2008, a Notice of Violation and Order to Show Cause and Notice of Assessment of Civil Fines and Penalties was mailed to the property owner by regular and certified mail. The notice states the following:

"YOU ARE HEREBY NOTIFIED that if the public nuisance is not abated and the violations corrected on or before such time, you shall be subject to such fines and penalties as permitted by law. These include Administrative Fees set forth in the attached fee schedule, and fines and penalties in the amount of \$100/day from the date of this Notice for each day the violation continues to exist during the 30-day correction period to a total of \$7,050. Should you fail to timely pay these fines, penalties, and fees, the County may also place a lien on your property and, with regard to the Administrative Fees, place these fees as a tax against your property. Interest may accrue until such time as the fines, penalties and fees are paid."
7. On December 29, 2008, a Notice of Incomplete Application was mailed by RMA planning to the property owner informing him of the additional information needed to process his application. It states in part: "Revise site plan" and supply "An operation statement".
8. An Administrative Hearing was held on January 21, 2009. The Administrative

Hearing Notes indicated that the "...property was in compliance prior to the hearing." This is inconsistent with the investigative notes compiled by a Code Enforcement Officer on January 21, 2009, and put on record at the hearing, which stated, "I inspected the property for the Administrative Hearing and noted the violations still exist."

9. The hearing officer noted on the Administrative Hearing Notes of January 21, 2009, that RMA can not issue a permit without the approval of the Special Use Permit for the seatrain.
10. The result of the January 21, 2009 hearing was a fine of \$270 disregarding all other fines, fees, and penalties.
11. On February 21, 2009, a letter was sent from an adjacent property owner to a County Supervisor inquiring as to the disposition of the trucking operation and the problems associated with the code violations.
12. On February 25, 2009, a memo was sent to the Director of RMA from the Code Enforcement Division concerning an inquiry made by a County Supervisor about this code violation. The memo states that the fees of \$1050 were rolled back to \$270 and all fines owed the county were dropped because the property owner made an attempt to comply. The memo also makes reference to having another hearing on March 18, 2009 before the same hearing officer. This violation was not reviewed at the March 18, 2009 Administrative Hearing.
13. On March 9, 2009, an RMA memo from Code Compliance was sent to the Project Planner, stating the following, "The parcel that contains your project is also the location of a violation. This violation No. [XXX] consists of trucking

without a Use Permit." The property owner "...states in his application that he wishes to perform light maintenance. This is only allowed inside of an enclosed structure. The following items should be considered as additions to the Conditions of Approval: (1) No maintenance of the trucks is allowed unless the maintenance is conducted inside of an enclosed shop building. (2) Screening shall be installed to shield this trucking operation from view (such as plants). (3) No inoperative or wrecked vehicles or trucks shall be stored on this site. (4) Employee's vehicles shall be parked behind the screening."

14. On March 10, 2009, a memo was sent to the RMA project planner from County Fire concerning this Special Use Permit application, with the following recommendations, some of which were:
 - "1. Provide all-weather access roads to the building or buildings affected by the Special Use Permit.
 2. The fire department shall be notified of proposed start date of any processing, storage, or special use granted and mitigated from the start, and not after building operations begin."
 - "4. Violations of any of these conditions will cause the fire department approval of the Special Use Permit to be rescinded."
15. Nothing further has been done regarding this particular code violation
16. Currently, there are over 400 code enforcement cases not being worked.
17. As of November 16, 2009, approximately \$2,000,000 in fines, penalties, fees, interest and liens is owed to the County.

18. The Board of Supervisors approved RMA's recommendation to consolidate Code Enforcement with Building Inspection April 2, 2009. This has eliminated Code Enforcement personnel.
19. The last Administrative Hearing took place in December 2009.
20. Nothing further has been done regarding this particular code violation.

CONCLUSIONS

Due to the elimination of Code Enforcement personnel, RMA is overwhelmed. In the past, Code Compliance Division generated revenue. At present, with the significant staff reduction, revenues have decreased and known code violations are not being tracked and corrected.

Research confirms that collection of fines, penalties, interest and fees described in this case are indicative of how the RMA operates. This demonstrates why revenue is not generated.

The County is 158 years old and will continue as a County in the future. While liens may take years to collect, most are in fact collected at some point in time generating revenue for the County. Tulare County cannot afford to be non-compliant and expose its citizens to unnecessary health and safety code risks. Failure to enforce established ordinances during this economic downturn is not fiscally responsible.

RECOMMENDATIONS

1. Enforce all established code and zoning ordinances.
2. Take every action needed to track until completion all currently identified code and zoning violations.
3. Enforce collections of all fines, fees, interest and penalties, as shown on the RMA Code Compliance Division Schedule of Fees.
4. Evaluate recent staff reductions of RMA Inspection and Code Enforcement Divisions to determine effects on revenue collection and code compliance.
5. Start required Administrative Hearings immediately.

REQUIRED RESPONSES

Tulare County Board of Supervisors
Tulare County Resource Management Agency
Director
Tulare County Chief Administrative