

THE LOAFING BARN

SYNOPSIS

A dairy barn constructed in Kings County was not the type, size, or in the location for which the building permit was issued.

WHY THE GRAND JURY INVESTIGATED

While attending the Board of Supervisors meeting on September 29, 2009, the Grand Jury was disturbed by the fact that the Board did not uphold the recommendation of the Community Development Agency, Planning Commission and the County Counsel to deny a variance on the construction of a dairy barn. It was built too close to the road and was not the same type of barn as originally permitted.

AUTHORITY

California Penal Code Section 925: The Grand Jury shall investigate and report on the operations, accounts and records of the officers, departments or functions of the county.

METHOD OF INVESTIGATION

Members of the Community Development Agency and Planning Commission staff members were interviewed in order to get a better understanding of the facts in the case. In addition, the minutes of the Planning Commission were reviewed. All members of the Board of Supervisors were interviewed individually to determine their reasons for disagreeing with the Planning Division and the County Counsel. Visits were made to the site of the barn at different times so the Grand Jury could become acquainted with, and have a better understanding of, the problem.

BACKGROUND AND FACTS

On July 30, 2002, the Dairy Element of the Kings County General Plan was adopted by the Kings County Board of Supervisors. "Section V provides that the Code Compliance division of the Kings County Planning Agency will monitor new and expanded existing dairy operations to ensure that they operate according to their approval requirements. In addition, dairies established before permits

were required will be more closely monitored to ensure they do not create nuisances.”

Currently there is no provision in the Dairy Element to enforce compliance with its policies. The project in question has cost the County of Kings extra manpower, paperwork and funds which cannot be recouped.

In January 2008 the Kings County Zoning Administrator approved a proposal to construct a loafing barn incidental to an existing dairy. In May 2008 the Kings County Community Development Agency and Planning Division issued a “Notice of Violation” on the site. The main violations were that the barn actually built was a free stall barn, not the loafing barn originally approved, and was constructed too close to the road.

In October 2008 the Planning Commission revoked the building permit.

In May 2009 the applicant filed an application for a variance for the barn which had already been built. The Zoning Administrator was unable to determine if any of the five required findings were made in order to approve the variance.

On August 11, 2009, the applicant filed an appeal to the Board of Supervisors to grant a variance.

On September 29, 2009, the Board of Supervisors voted to not uphold the denial of the variance. This was contrary to the Planning Commission and the County Counsel recommendations.

Visits to the site by the Grand Jury confirmed the planning staff reports. The original building permit was for a loafing barn, which is essentially just a shade structure. The actual structure is a free-stall barn where cows get food and water. In addition, the structure was built only 41 feet from the road centerline instead of the 61 feet required. This location crowds the road when equipment is used in operating the dairy and presents a hazard to traffic, particularly in foggy weather. Testimony from the planning staff indicates that only a final inspection of a loafing barn is required by the building inspectors thus the incorrect location of the structure was only determined after it was completed. This appears to be a flaw in Dairy Element which requires no inspections. The fact that a free stall barn was built instead of the permitted loafing barn resulted in additions to the building permit to include electricity.

FINDINGS AND RECOMMENDATIONS

Finding 1

The barn was built closer to the road than was allowed in the building permit.

Recommendation 1

The Dairy Element should be revised to include an on-site inspection at the beginning of construction.

Finding 2

The building actually built was a free stall barn, 1400 square feet larger than the original application for a loafing barn as the building permit stated. The barn had electricity to power cooling fans, and had other amenities.

Recommendation 2

Revise the Dairy Element to include on-site inspections during construction.

Finding 3

The Board of Supervisors overrode the recommendations of the Planning Commission, the Community Development Agency, and advice of County Counsel on the variance and approved it, despite the fact that none of the five criteria to grant a variance was met. Reasons given for not following those recommendations were that the planning staff made several mistakes, and the barn, as built, did not appear to them to be a traffic hazard.

Recommendation 3

None

COMMENTS

Dairies are the largest sector of Kings County agriculture. The Dairy Element of the County General Plan was written to encourage and yet control the growth of dairies. From testimony heard by the Grand Jury, there is the impression that dairy owners feel that they are practically exempt from control. The decision of

the Board of Supervisors to override the staff recommendations has set a precedent and the Grand Jury feels that it opens the door for future violations.

In the opinion of the Grand Jury, allowing the subject dairy to be built too close to the road will possibly make the county liable in case of an accident on the road.

RESPONSE REOUIREMENT

Penal Code Sections 933 and 933.05 require that specific response to both the findings and recommendations contained in this report be submitted to the Presiding Judge of the Kings County Superior Court by the Board of Supervisors within 90 days from date of receipt.