

6/5/2018

Notice of Appeal to Board of Supervisors

See Detail Backup Documentation (filed with Department of Conservation and Development (DCD) on 5-21-2018-many detailed pages) Confidentiality Requested

Mary Dunne Rose, # MS060037 or CV14-0042; 78 Grandview Place, Walnut Creek, Ca

RE: Appeal and Declaration of Civil Rights Violations by CCC Against Applicant



Dear Board of Supervisors,

Applicant respectfully presents this appeal regarding the DCD Response Denial Letter dated 5/9/2018 to applicant's original RA request filed on 9/29/2017 and the entire processing of her permit. In addition, applicant has provided this Summary of Appeal (filed with Clerk of Board) and the Detail Backup Documentation (filed with DCD 5-21-2018) appeal packet for your consideration and review.

PARTIES: Applicant Mary Dunne Rose. Also, Contra Costa County is a municipal entity, including its respective departments, agencies, and other instrumentalities, is a "public entity" within the meaning of 42 U.S.C. § 12131(1) and 28 C.F.R. § 35.104, and is therefore subject to Title II of the ADA, 42 U.S.C. §§ 12131-12134.

REQUEST FOR PROMPT MEETING WITH DIRECTOR OF DCD AND one BOFS Applicant respectfully requests a meeting with a Walnut Creek BofS and with the Director of DCD to discuss this appeal and possible solutions. Requests the appointment to occur promptly, in the next 3 to 4 weeks.

BACKGROUND: Applicant filed on **9/29/2017 her original, first reasonable accommodation request** with CCC, that would benefit her family (senior with disabilities protected under various fair housing laws, CCC General Plan and other laws). Applicant's written RA request included building a home using Universal Wheelchair Friendly Design on the first floor, which requires extra space to accommodate 5 feet wheelchair turning requirement in entryway, kitchen, downstairs bathroom, wider halls and doorways. Further, there are to be NO STAIRS at the front door, instead applicant will build a ramp for safe ambulation and entry to the home. All these changes increased the size of the home and will require requested variances in setback limits to allow the Universal Design building requirements for disabled persons, seniors with special needs. Other requested items are to allow applicant and her family to build the home of their choice to age in place safely. Applicant respectfully requested RA processing and CCC compliance with their current General Plan policies, procedures and other state and federal laws so she can build her special home of her choice.

Applicant has tried unsuccessfully for years (spent over \$50,000 to date) to work with CCC and satisfy all CCC imposed CofA and obtain the approved final map to build a home. She has just very recently realized that certain of her project's CofA are near impossible conditions to satisfy, certain of her CofA have excessive and costly restrictions, including "takings without just compensation" and that her original processing of her application was unfair, violating her free speech, equal protections and due process which resulted in creation of discriminatory CofA. It is applicants understanding, CCC may impose conditions on development so long as the conditions are reasonable, other similarly situated persons are treated in the same manner and there exists a sufficient nexus between the conditions imposed and the projected burden of the proposed development. Certain of applicant's CofA do not meet these requirements. Applicant requested the RA process, understanding CCC granting the CofA modifications (it is just not feasible to build applicant's home without modification of certain CofA) would be the only way (nexus) the disabled friendly home would ever be built. The requested accommodations are necessary to afford people with a disability an equal opportunity to use and enjoy a handicap assessable dwelling of their choice. There is a very clear relationship (nexus) between the requested accommodations and the disability. The Universal Wheelchair Friendly Designed home appears to need modified conditions of approval, so it can be approved and built. It has taken applicant years to understand how staff Ms. Rose Marie Pietras intentionally, recklessly discriminated, improperly handled my application: CCC allowed creation of certain unfair CofA resulting in applicant's embarrassment, humiliation and shame from the special "different treatment" applicant and her CofA received during this long, very unpleasant process.

LAW: The Federal Fair Housing Act ("FHA") and the California Fair Employment and Housing Act ("FEHA") impose an affirmative duty on CCC to make reasonable accommodations (modifications or exceptions) in their zoning laws, other land use regulations and practices when such accommodations "may be necessary to afford" disabled persons "an equal opportunity to use and enjoy a dwelling of their choice" to prevent discrimination. Please read attached 5-15-2001 letter office of Ca Attorney General and letter dated 6-17-2002 of Department of Housing and Community Development. Section 504, Rehabilitation Act of 1973, is US law that guarantees certain rights to people with disabilities, federal civil rights laws offering protection for people with disabilities. Title II of the Americans With Disabilities Act (ADA) requires that state and local governments provide program access for individuals with disabilities to the whole range of services and programs. 42 U.S.C. § 12131; 28 C.F.R. § 35.150(a)(3). Also, Unruh Civil Rights Act, AB 1600, the Mitigation Fee Act, all the United States Constitutional rights including all amendments, Bill of Rights, case law that are other critical rights prohibiting discrimination. See applicant Detail Backup Documentation (filed with DCD on 5-21-2018) for information on other laws such as ones relating to General Plan and CCC policy, goals and other practices.

GROUND FOR APPEAL: CCC could improve upon its deliberately indifferent past actions to properly exercise its police powers to adopt policies, official positions, ordinances, regulations, decisions, including the critical need to properly **train staff**, necessary to prevent fundamental constitutional violations and ensure a fair planning and land use process, including the reasonable accommodation (RA) due process, free of discrimination and errors. CCC BofS needs to establish a written policy and **fund DCD's budget for training** (not staffs' fault errors are made-they need training) the DCD staff and their supervisors to ensure compliance and enforce certain applicant rights allowed by law. This will allow CCC staff to respect constitutional rights, more important, prevent errors in land use permitting processing from continuing, including not following their own General Plan, State and Federal laws and fundamentally unfair procedures. CCC could benefit from establishing a pattern of facts and actions documenting their commitment to a discrimination free, constitutional rights compliant land use application and processing practices **for all persons**, including disabled, senior, special needs folks using a proper exercise of police powers to prevent future staff errors. Applicants constitutional rights need to be respected. For example, denial of free speech; equal protection and due process; right to a prompt, good faith interactive communication process; takings without just compensation, discrimination and error predisposed RA processing due to lack of training, result in depriving applicant of protected constitutional rights. These sort of actions, such as **issuing discriminatory CofA** cause emotional distress, physical pain and mental anguish to applicant. Applicant has suffered during this lengthy period (years) by trying to resolve CofA issues with the county with no positive solution. CCC needs to enhance communicative processes, engage in a prompt fair due process and equal protection, interactive communication process, prevent discriminatory processing due to inadequate training which has caused applicant's suffering, emotional and mental distress, shame, embarrassment, sadness, anxiety, many sleep disturbed nights, physical pain while needed surgery is delayed, excessive monetary costs, incorrect takings of land rights, loss of use of Universal Handicap Friendly Designed home of our choice and in fact, over many years, never issuing a final approved permit and map, and finally hopelessness.

CCC BofS has an affirmative duty to establish a "blueprint" for a discrimination free and error free procedural due process, documenting their commitment to a **constitutional rights** compliant land use application and processing practices **for all persons**, including disabled, senior, special needs, distributing this "blueprint" to the public and making it available to everyone, including proper training of CCC personnel to carry out these duties, to prevent future staff errors. **For example, applicant requested a lot split and permit to subdivide her property in year 2006, years ago, filing an application with CCC. September 2006 applicant met with CCC DCD staff Ms. Rose Marie Pietras to discuss the application. Applicant informed Ms. Pietras of my foot deformity, showed her the foot and told her that applicant needed to plan for her old age as the foot also had increasing rheumatoid arthritis. CCC staff Ms. Pietras was callously indifferent to my protected rights, she maliciously created certain conditions of approval for my project that are discriminatory, inappropriate and punitive. CCC staff Ms. Pietras did not inform applicant of the Reasonable Accommodation (RA) laws at any point in the**

process. Nor did staff provide a CCC written RA policy to applicant. Nor did any other CCC staff or personal (supervisors) inform applicant of the RA laws. Nor were there any posters in the DCD office, flyers or any information on the internet relating to applicant's rights to RA process at CCC. This "no written policy for years" caused applicant to be denied her 1st Amendment right to Exercise Free Speech to request RA rights and equal protection and due processes rights and be free of discrimination. If proper RA processing had occurred in 2006, applicant never would have been given the certain "special different treatment" CofA that are near impossible conditions to satisfy, discriminatory and her home could have been built by now.

See below for other issues:

- No written RA policies leads to failure to ensure law compliant, non-discriminatory CofA creation and later, prompt processing and results in cumulating processing errors. No "written RA policies" caused, in applicant's case, denying equal services, programs, and activities to individuals with disabilities, allows providing different benefits or services and treating differently individuals with disabilities, limiting individuals with disabilities in enjoyment of any right, privilege, advantage, or opportunity enjoyed by others, utilizing methods of administering its programs and services that have the effect of subjecting individuals with disabilities discrimination on the basis of their disability. No written policy creates a failure to engage in a prompt interactive communication process. No written policy made available to the public set customs and precedence with staff and supervisors to believe that no "RA/ fair and nondiscriminatory, prompt, due process" processing is required for a disabled person.

See below for other issues:

- **Please see attached 6/17/2002 letter from State of Ca, Department of Housing and Community Development stating General Plan housing element law requirements, effective 1/1/2002**, inclusion in CCC "2002 housing element...provide reasonable accommodations for housing designed for persons with disabilities.
- In fact, **the CCC General Plan Housing Element for 2009 to 2014, Assessible Housing section, states the "5-year objective" was to "document the RA procedures"**, showing a past refusal to make reasonable accommodations in rules, policies, practices and services (and make these available to the public) when such accommodations may be necessary to afford a person with a disability the equal opportunity to use and enjoy a dwelling of their choice in 2006.
- **CCC lack of any Reasonable Accommodation written policies and procedures** (...2001, 2002, 2003, 2004, 2005, 2006, 2007, 2008, 2009, 2010, 2011, 2012, 2013 and part of 2014) shows CCC failed to take required positive actions designed to stop the discrimination and maintained non-RA compliant policies that effectively served to punish the victim (applicant). Further, applicant understands this was the CCC "represented official policy-a so widespread practice, given the long-standing decision **not to** promptly execute a written policy and ordinance, regulation, and critical training" pertaining to CCC land use RA processes for seniors and the disabled.
- Also, no prompt interactive communication process, denied rights to trigger RA non-discrimination laws to be respected and used, the 14th amendment rights, equal protection and due process (including proper communication) along with the 5th amendment, depriving a person of their property, along with other key rights.

After the Great Recession, in January 2014 applicant hired consultants to complete the open items of the project to get the final map, still acting in good faith and not understanding the discriminating effects of certain impossible, erroneous CofA on her project. The continued, excessive delays of applicant's project are not reasonable.

- For example, Spring 2014 CCC staff S. Gong submitted documents to CCC County Counsel for review and approval. Applicant finally received the response from CCC County Counsel, ONE YEAR LATER, ASKING FOR MORE INFORMATION, frustrating, causing anxiety and forcing applicant take a break until 2017 to preserve her emotional and physical wellbeing.
- For example, both CCC RA denial response letters (which were not prompt and both violated the 45-day policy) didn't even followed CCC own RA policy/laws of necessary findings required by statute or policy:

“...shall make a written determination within 45 days...”

Further, “The RA written determination to grant or deny the request for reasonable accommodation shall be made in accordance with Findings and Decision” Applicant never received from CCC the written determination documenting the Findings and Decisions in the required lawful format.

- For example, applicant **waited over 7 months from initial application filing date of 9/29/2017** to receive the denial letter from the Director of CCC DCD which is as a violation the prompt RA processing laws and CCC own General Plan.
- When applicant went to CCC office in person to file her first appeal to the Deputy Director she was required to pay the \$125.00 fee per CCC unofficial RA policy. Applicant received an invoice in the mail the last week of May 2018 for \$3,497.94, described as “Account Past Due.” Applicant sent an email to CCC staff and over one week later, 4 phone calls (none returned) still does not have an answer to the question, “what is the CCC written RA policy on charging various processing fees for a RA request, during the entire processing period of the RA request?” Further, CCC billed applicant an additional \$10,000.00, then in February 2018 CCC reversed the charges. This back and forth is stressing and confusing and causing applicant great anxiety.
- For example, applicant filed her first RA request 9/29/2017 to start the RA process and had already received the first “CCC RA formal response denial response letter” dated 11/17/2017 (exceeding and violating the CCC 45-day internal written RA policy) when CCC DCD Deputy Director A. Bhat tried too late to organize a meeting with applicant (initiated on 11/21/2017) and then failed to keep her verbal agreement with promised timely scheduling of meeting dates. To compound the errors, the Directors 5/9/2018 denial response letter refers to this example and misconstrues the facts, dates and truth. The facts are as follows:

On 11/21/2017 applicant received a phone call from CCC supervisor A Bhat, she offered to “meet next week or week after” with applicant. Applicant accepted offer, agreed only if next week or week after. Applicant sent email to Supervisor A. Bhat with 5 proposed dates for meeting with CCC as discussed earlier in the day. Applicant provided dates as per verbal phone contract agreement that day, proposed anytime Wednesday Nov 29th 215pm or later, Thursday the 30th, Nov, 215pm or later, Friday December 1 at 915am to 1015am, Saturday, December 2 all day or perhaps Monday, December 4 at 1:45.

Then on 11/30/2017 (9 days later) CCC S Tully sends email to applicant, saying CCC staff D Kelly is just now trying to set up the meeting and wants to meet many days in future. Applicant declined to meet over 3 weeks late as meeting date on 12/12/2017 is not prompt RA processing, its appears to be more discriminatory stalling.

Nowhere in the CCC RA internal policy is there any mention of steps to engage in an interactive process of communications relating, after a request for RA, to ensure prompt processing of RA request and avoid discrimination. The obligation to initiate the timely, well planned, good faith communication processes before the 45-day deadline is past, is CCC’s duty and in this case, errors in the process can result in and is tantamount to disability discrimination.

- The facts are the 11/17/2017 denial response letter was held out to applicant as the denial letter, not a “preliminary
- On 4/30/2018 CCC Director and Deputy Director met with applicant to discuss her deformed foot, showed CCC the medical X-rays, and other medical issues (see attached “Timeline” documentation) and the agenda did list “other” for opening communication. Applicant initiated the meeting. CCC personal did not communicate much at the meeting. Better communication processes need to be established by CCC, it should not rest with the applicant to initiate communications!
- When applicant went to CCC office in person to file her first appeal to the Deputy Director she was forced to wait over 35 minutes to hand in her appeal packet and pay the required \$125.00 fee. Applicant was

discriminated against, forced to wait, forced to watch others being served promptly while CCC was indifferent to wasting my time and my humiliation.

- For example, CCC, over the entire project processing period, keeps “losing” critical documents given to staff and then requests them again or states they “need additional information.” CCC might want to promptly set up advanced meetings to engage in an interactive communication process, during the 45-day RA processing period, **not after the 45 days deadline occurs**, so these kinds of “miscommunications” are substantially reduced and information exchanged and requested is provided and received in a respectful, non-discriminatory process.

Applicant will refrain from listing each of CCC General Plan policies, goals etc. that were not complied with regarding applicant’s RA processing for brevity, while still reserving the right to bring up in the future.

CCC did not have, and still does not have, a BofS approved, codified, written RA ordinance that are available to the public, nor are there any posters in the DCD office, or processing application forms or any detailed RA policy information on the internet. This lack of good faith effort to notify the public in general, and senior, disabled and special needs folks specifically, of their rights to a fair RA process and prompt, good faith efforts interactive RA communication process leads to further discrimination.

- For example, city and county officials received the May 15, 2001 letter from **State of Ca Office of the Attorney General, B Lockyer, dated May 15, 2001** informing CCC of the wisdom of adoption of a RA procedure and training to prevent “implementation issues” of RA laws to handle the requests from disabled people, along with other issues (see attached letter).
- For example, in August 2017, applicant calls CCC Martinez Department Conservation and Development DCD, requests written procedures on CCC Reasonable Accommodation policy and was informed by staff no written Reasonable Accommodation (RA) policy exists, in fact, staff did not know what a RA policy was, so applicant explained it to her.
- Applicant also asked for the written RA policy from DCD staff S. Tully, 10/2017 and he told applicant, “there was not a written CCC RA policy.”
- The applicant prepares her detailed RA request without the benefit of any CCC RA rules; applicant files her RA request on 9/29/2017.
- On 10/5/2017 applicant still has no response from CCC acknowledging receipt of 9/29/2017 RA request, so applicant phones A. Bhat twice, and sends another email 10/5/2017 (includes PDF of 9/29/2017 RA again) initiating communications and requesting a response (6 days passed with no response, applicant feels ignored) from CCC.
- In addition, on November 2, 2017 staff S. Tully emails the applicant a RA written policy, dated 6/16/2014. Then DCD staff S Tully stated the RA was approved by the BofS and codified.
- On 11/20/2017 applicant calls Aliquot Assoc. firm, her consultant, asking how M Summer's new baby just born is doing. Applicant finds out the Aliquot firm received an email from CCC S Tully with attached **“CCC RA formal response denial response letter dated 11/17/2017”**, but applicant did not receive anything. Applicant lost 3 days of the 10-day appeal period, and with Thanksgiving holiday approaching, **could have missed entire appeal period!** This stressed out applicant over the Thanksgiving holidays and took time away from enjoying my family.
- On 11/20/2017 email from applicant to A Bhat, Deputy Director DCD, noticing her the “CCC RA formal response denial response letter” was 3 days late, violated CCC RA 45-day time process limit, policy. Further, notified her CCC sent to wrong address and applicant would never receive the mailed hard copy, preventing her from making the 10-day appeal period with Thanksgiving holidays approaching.
- 11/21/2017 Phone call CCC supervisor A Bhat, supervisor, Deputy Director said, “county NOT DENIED reasonable accommodation request, not yet subject to appeal”. Said the “CCC RA formal response denial response letter” is to be ignored. She said they will issue another 2nd letter. Applicant confused, feeling humiliated and anxiety filled, wondering why I am treated so poorly?
- Later 11/21/2017 DCD supervisor A. Bhat phoned and stated the RA policy emailed to applicant was an “internal policy” not a BofS codified policy.

- On 12/5/2017 Applicant receive (2nd final) CCC RA formal response denial response letter, it is almost the same as the 1st letter dated 11/17/2017. Applicant very stressed out, not sleeping thru nights, emotionally hurt.
- On 12/6/2017 applicant requests assistance, disability, from CCC with preparing my appeal response letter to the 11/17/2017 CCC denial letter. CCC staff S. Tully denies.
- On 12/12/2017 called my BofS office to request a meeting with BofS to ask help with preparation of my appeal. Next day Chief of Staff emails, "Our office cannot, unfortunately, assist you outside of required application processes." Applicant feels distressed.
- This deliberate indifference to RA laws over the years by CCC has resulted in unconstitutional conduct so pervasive as to constitute "a custom and policy of inadequate training of personnel and inadequate supervision relating to RA processing" and that this policy caused the violation of applicant's constitutional rights resulting in discrimination and failure of fair due process.
- CCC actions restrict supply and building of housing for disabled and seniors people wanting to use Universal Handicap Friendly Designs in time of a "prolonged and systemic housing crisis of staggering proportion in California."

In addition, applicant has a right to a prompt, good faith interactive communication process, including discrimination free and error free processing of her application. CCC deprived applicant of protected constitutional rights; including issuing punitive CofA to applicant that were discriminatory and resulted in denying applicant due process, equal services, programs, and activities to an individual, allowed CCC to provide different benefits or services and be treating differently than other people similarly situated, limiting applicant the enjoyment of any right, privilege, advantage, or opportunity enjoyed by others, utilizing methods of administering its programs and services that have the effect of subjecting individuals to discrimination. CCC must show CofA conditions have a "rough proportionality" to the development's impact and that CCC used a fair and impartial process, not discriminating, when creating CofA for a project. **DCD staff Ms. Pietras intentionally disregarded applicant's civil rights and discriminated against applicant (reckless, malicious errors) when she created the Conditions of Approval (CofA) for applicant's project, by imposing certain CofA that had excessive restrictions, illegal takings without just compensation and certain unreasonable, near impossible conditions to satisfy. The staff's supervisor also did not correct these errors. The unequitable CofA are a result of discrimination, inadequate training and supervision leading to applicant being denied fundamentally fair due process rights and instead, set her up for a "long term expensive, discriminatory planning department process" as applicant attempted again and again to obtain her approved final map and CofA and failed.** For example, see all the drainage requirement CofA's, taken and viewed together, are discriminatory. The findings and COAs, **A 2. Drainage and Flood Control requires a parcel map not to be filed until **all the collect and convey requirements and improvements have been met.** However, **COA 53 and 54** require on my small project "applicant construct improvements to guarantee adequacy," when other CCC projects can just pay the drainage fee. To guarantee adequacy would require applicant to spend hundreds of thousands of dollars. How can the home be built if it is impossible to "guarantee adequacy" (nexus for approval of modified CofA)? Another example, applicant's COA11 does not allow import or export of any fill material, yet many other projects approved in CCC do not have this costly, difficult to implement, discriminatory CofA. How can applicant build her wheelchair ramp from the driveway to the house for safe home access if no import or export of fill (nexus for approval of modified CofA)? To summarize, **CCC staff Ms. Pietras demonstrated her lack of training by creating certain CofAs were not normally imposed on other similarly situated persons and projects; violated applicants right to a fair and equal due process, leading to the arbitrary and longtime resulting humiliating discriminatory treatment of applicant over this entire project, from 2006 to current.****

- For example, CCC over the entire project processing period (2006 to current), continually "requests additional information" over and over by email and phone calls and when applicant gives them the information they wait, and wait, then come back later and request a slightly different kind of information. This causes lengthy delays, forces applicant to hire more consultants and causes other issues such as applicant emotional distress. CCC could benefit by establishing a fair, nondiscriminatory policy and

practices, such as engaging in an interactive communication process, that limits this type of discriminatory delays and unnecessary requests for more information.

Instead, CCC might want to promptly set up advanced scheduled meetings, during the 45-day RA processing period, so this kind of “miscommunications” are substantially reduced and information exchanged and requested are provided and received in a respectful, non-discriminatory process.

TAKINGS: In April 2014 CCC staff also had applicant complete, “Consent and Ballot form” to be filled out, signed by owner, notarized and returned to PW staff to satisfy CofA #51 for future lighting district taxes, so applicant continues to pay taxes even though the house final map and permits are not issued, due to continued denials of RA requests and the discriminatory CofA’s discussed above. During September 2014, applicant received written instructions and attachments from CCC Public Works K Dahl, Senior Engineering Technician, asking applicant to sign and notarize the “Deferred Improvement Agreement” written and prepared by K Dahl and return to him. Applicant signed and returned in good faith so that her project would be approved. The project has not been approved and applicant believes the entire “drainage CofAs” have resulted in a taking, while not knowing what staff K Dahl did with the “Deferred Improvement Agreement.” Has it been recorded, further subjecting applicant’s land to additional burdens/takings? In addition, CCC included a “Scenic Easement” CofA that appears to be illegal, taking 40% of her land without just compensation, U.S. Const. 5th Amend. See Nollan, 483 U.S. at 834-835. Most important, cities must prove that such CofA have a “rough proportionality” to the development’s impact and that they use a fair and impartial process. See Dolan, 512 U.S. at 391.

In closing, applicant respectfully requests the Board of Supervisors grant the RA CofA modifications, so that applicant can have non-discriminatory CofA like other similarly situated people. Applicant also requests removal of the 40% Scenic Easement that is an illegal taking. Allowing these modifications of certain CofA would be the only way (nexus) the disabled friendly home would ever be built. The requested accommodations are necessary to afford people with a disability an equal opportunity to use and enjoy a handicap assessable dwelling of their choice. There is a very clear relationship (nexus) between the requested accommodations and the disability. Applicants special interests including “righting the past injustices and wrongs” for a disabled, senior family so we can build our wheel chair friendly home.

INJURY: Applicant claims the following items of injuries:

- Physical harm to applicant during and after the events at issue, including, suffering physical pain in feet as her surgery is delayed due to CCC delays in the RA process, headaches, continuing discomfort, and any physical pain that applicant is reasonably certain to experience in the future.
- Emotional and mental distress and harm to applicant during and after the events at issue, including suffering, shame and humiliation, and mental anguish, many sleep disturbed nights, and any such emotional and mental harm that applicant is reasonably certain to experience in the future such as hopelessness.
- Possible cost of reasonable legal services that applicant could reasonably need in the future.
- Medical costs of therapy started when started RA process.
- Future lighting district taxes, in perpetuity, must be paid even though the home is not built.
- Loss of use of Universal Handicap Friendly Design Home now and in the future.
- FMV Impairment of lot A and B with the recording of the error in the “Deferred Improvement Agreement”
- Monetary losses of over \$50,000 to date.
- Very substantial emotional distress, such as embarrassment, sadness, anxiety, suffering - due to constitutional rights violations and long-standing age and disability discrimination, degrading comment by staff, denial of basic human right to live in housing of our choice to help us age in place.
- Lost earnings while applicant worked on this project.
- Takings by Scenic Easement Requirement.
- Suffering by discriminatory CofA.

- Deprivation of the right to respectful interactive communicative process.
- Frustrations with Reasonable Accommodation process and the many errors.
- Inconvenience and loss of enjoyment of life.
- Reasonable value of each day applicant is not in her disabled friendly home and must delay her surgery.

Applicant is unable to set a value on the injuries at this time. The range could be \$350,000 to \$3,000,000 depending upon future negotiations with CCC.

I, Mary Dunne Rose, applicant and appellant, have read the forgoing document and understand its contents. With the contents that I have personal knowledge, I know and believe them to be true of my knowledge. I verify my belief that the above statements are true. Regarding the contents that I do not have personal knowledge of, I believe them to be true based on specified information, documents or both. I assert the truth and my belief in the truth of those matters under penalty of perjury.

Please process this RA appeal to the BofS ASAP!

Date 6/5/2018

Name Mary Dunne Rose, applicant
 Mary Dunne Rose
 Contra Costa County

From CCC RA internal policy:

Appeal of Determination.

A determination by the reviewing authority to grant or deny a request for reasonable accommodation may be appealed to Director of the Department of Conservation and Development, or designee. Upon review of the case a final decision will be rendered by the Director, **subject to appeal to the Board of Supervisors, under the appeal procedures in Title 1, Chapter 14-4 in the County Ordinance Code.** (see below)

Chapter 14-4 in the County Ordinance Code. 14-4.004 - Notice filed by appellant.

The appellant shall, within **thirty days** of the action appealed from, file with the **Clerk of the Board** a verified written notice of appeal concisely stating the facts of the case and the grounds for his appeal including his special interest and injury.
 (Ord. 70-36 § 1, 1970: prior code § 1207).

Attachments:

- Page 6-103 from the CCC December 8, 2009 General Plan, Housing Element "Document RA Procedures; 1 page.
- Letter from State of Ca Office of the Attorney General, B Lockyer, dated May 15, 2001 (need RA policy) 4 pages.
- Letter dated June 17, 2002 from State of Ca, Department of Housing and Community Development stating General Plan housing element law requirements (RA requirements in housing element); 4 pages.

From CCC General Plan

2009 to 2014



Program	Five-Year Program Objectives
Special Needs Housing	<ul style="list-style-type: none"> ▪ Revise the zoning code with the following changes: <ul style="list-style-type: none"> ○ Identify zone where emergency shelters are allowed by right pursuant to Chapter 633, Statutes of 2007 (SB2) ○ Permit transitional and supportive housing as a residential use subject to only those restrictions that apply to other residential use of the same type in the same zone. ○ Allow agriculture employee housing to be permitted by-right (without a conditional use permit) in single family zones for less than six person and in agricultural zones with no more than 12 units or 36 beds consistent with Health and Safety Code 17021.5 and 17021.6 ▪ Provide financial incentives for the development of housing targeted to special needs populations (HOME, CDBG, HOPWA, MHSA, RDA set-aside funds). ▪ Work with developers to obtain additional required financing. ▪ Allow techniques such as smaller unit sizes, parking reduction, common dining facilities and fewer required amenities for senior projects.

ACCESSIBLE HOUSING

Persons with disabilities represent a major special needs group in Contra Costa County. To maintain independent living, disabled persons are likely to require assistance, which may include special housing design features, income support for those who are unable to work, and in-home supportive services for persons with mobility limitations. To provide additional housing opportunities for the disabled, the County will continue to require inclusion of accessible units in all new construction projects receiving County financing (e.g. CDBG, HOME, redevelopment set-aside). Current regulations require that five percent of the units must be accessible to the physically impaired and an additional two percent of the units must be accessible to the hearing/vision impaired.



In order to facilitate the development of appropriate housing for persons with special needs, the County works to remove development constraints and provide reasonable accommodations in the development of such housing as requests are made. The County will formalize this practice as written reasonable accommodation procedures.



Program	Five-Year Program Objectives
Accessible Housing	<ul style="list-style-type: none"> ▪ Continue to require inclusion of accessible units in all new construction projects receiving County financing. ▪ Loan funds are available through the Neighborhood Preservation Program and the Housing Authority Rental Rehabilitation Program for accessibility improvements in existing affordable housing. ▪ Document reasonable accommodation procedures.



CONTRA COSTA INTERAGENCY COUNCIL ON HOMELESSNESS

The Contra Costa County Continuum of Care and the Homeless Inter-agency Inter-departmental Working Group joined to form the CCICH, which implements programs and strategies contained in the Continuum of Care Plan and Ten-Year



STATE OF CALIFORNIA

OFFICE OF THE ATTORNEY GENERAL

BILL LOCKYER
ATTORNEY GENERAL

May 15, 2001

To: All California Mayors:

Re: Adoption of A Reasonable Accommodation Procedure

Both the federal Fair Housing Act ("FHA") and the California Fair Employment and Housing Act ("FEHA") impose an affirmative duty on local governments to make reasonable accommodations (*i.e.*, modifications or exceptions) in their zoning laws and other land use regulations and practices when such accommodations "may be necessary to afford" disabled persons "an equal opportunity to use and enjoy a dwelling." (42 U.S.C. § 3604(f)(3)(B); see also Gov. Code, §§ 12927(c)(1), 12955(l).)¹ Although this mandate has been in existence for some years now, it is our understanding that only two or three local jurisdictions in California provide a process specifically designed for people with disabilities and other eligible persons to utilize in making such requests. In my capacity as Attorney General of the State of California, I share responsibility for the enforcement of the FEHA's reasonable accommodations requirement with the Department of Fair Employment and Housing. Accordingly, I am writing to encourage your jurisdiction to adopt a procedure for handling such requests and to make its availability known within your community.²

¹ Title II of the Americans with Disabilities Act (42 U.S.C. §§ 12131-65) and section 504 of the Rehabilitation Act (29 U.S.C. § 794) have also been found to apply to zoning ordinances and to require local jurisdictions to make reasonable accommodations in their requirements in certain circumstances. (See *Bay Area Addiction Research v. City of Antioch* (9th Cir. 1999) 179 F.3d 725; see also 28 C.F.R. § 35.130(b)(7) (1997).)

² A similar appeal has been issued by the agencies responsible for enforcement of the FHA. (See Joint Statement of the Department of Justice and the Department of Housing and Urban Development, *Group Homes, Local Land Use and the Fair Housing Act* (Aug. 18, 1999), p. 4, at <<http://www.bazelon.org/cpfha/cpfha.html>> [as of February 27, 2001].)

May 15, 2001

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It is becoming increasingly important that a process be made available for handling such requests that operates promptly and efficiently. A report issued in 1999 by the California Independent Living Council makes it abundantly clear that the need for accessible and affordable housing for Californians with disabilities will increase significantly over the course of the present decade.³ The report's major findings include the following:

- Between 1999 and 2010, the number of Californians with some form of physical or psychological disability is expected to increase by at least 19 percent, from approximately 6.6 million to 7.8 million, and may rise as high as 11.2 million. The number with severe disabilities is expected to increase at approximately the same rate, from 3.1 million to 3.7 million, and may reach 6.3 million.⁴ Further, most of this increase will likely be concentrated in California's nine largest counties.⁵
- If the percentages of this population who live in community settings—that is, in private homes or apartments (roughly 66.4 percent) and group homes (approximately 10.8 percent)—is to be maintained, there will have to be a substantial expansion in the stock of suitable housing in the next decade. The projected growth of this population translates into a need to accommodate an additional 800,000 to 3.1 million people with disabilities in affordable and accessible private residences or apartments and an additional 100,000 to 500,000 in group homes.

I recognize that many jurisdictions currently handle requests by people with disabilities for relief from the strict terms of their zoning ordinances pursuant to existing variance or conditional use permit procedures. I also recognize that several courts called upon to address the matter have concluded that requiring people with disabilities to utilize existing, non-

³See Tootelian & Gaedeke, *The Impact of Housing Availability, Accessibility, and Affordability On People With Disabilities* (April 1999) at <<http://www.calsilc.org/housing.html>> [as of February 27, 2001].

⁴The lower projections are based on the assumption that the percentage of California residents with disabilities will remain constant over time, at approximately 19 percent (*i.e.*, one in every five) overall, with about 9.2 percent having severe disabilities. The higher figures, reflecting adjustments for the aging of the state's population and the higher proportion of the elderly who are disabled, assume that these percentages will increase to around 28 percent (*i.e.*, one in every four) overall, with 16 percent having severe disabilities. (*Ibid.*)

⁵These are: Alameda, Contra Costa, Los Angeles, Orange, Riverside, Sacramento, San Bernardino, San Diego, and Santa Clara. (*Ibid.*)

discriminatory procedures such as these is not of itself a violation of the FHA.⁶ Several considerations counsel against exclusive reliance on these alternative procedures, however.

Chief among these is the increased risk of wrongfully denying a disabled applicant's request for relief and incurring the consequent liability for monetary damages, penalties, attorneys' fees, and costs which violations of the state and federal fair housing laws often entail.⁷ This risk exists because the criteria for determining whether to grant a variance or conditional use permit typically differ from those which govern the determination whether a requested accommodation is reasonable within the meaning of the fair housing laws.⁸

Thus, municipalities relying upon these alternative procedures have found themselves in the position of having refused to approve a project as a result of considerations which, while sufficient to justify the refusal under the criteria applicable to grant of a variance or conditional use permit, were insufficient to justify the denial when judged in light of the fair housing laws' reasonable accommodations mandate. (See, e.g., *Hovson's Inc. v. Township of Brick* (3rd Cir. 1996) 89 F.3d 1096 (township found to have violated the FHA's reasonable accommodation mandate in refusing to grant a conditional use permit to allow construction of a nursing home in a "Rural Residential—Adult Community Zone" despite the fact that the denial was sustained by the state courts under applicable zoning criteria); *Trovato v. City of Manchester, N.H.* (D.N.H. 1997) 992 F.Supp. 493 (city which denied disabled applicants permission to build a paved parking space in front of their home because of their failure to meet state law requirements for a variance found to have violated the FHA's reasonable accommodation mandate).

⁶See, *U.S. v. Village of Palatine, Ill.* (7th Cir. 1994) 37 F.3d 1230, 1234; *Oxford House, Inc. v. City of Virginia Beach* (E.D.Va. 1993) 825 F.Supp. 1251, 1262; see generally Annot. (1998) 148 A.L.R. Fed. 1, 115-121, and later cases (2000 pocket supp.) p. 4.)

⁷ See 42 U.S.C. § 3604(f)(3)(B); Gov. Code, §§ 12987(a), 12989.3(f).

⁸ Under the FHA, an accommodation is deemed "reasonable" so long as it does not impose "undue financial and administrative burdens" on the municipality or require a "fundamental alteration in the nature" of its zoning scheme. (See, e.g., *City of Edmonds v. Washington State Bldg. Code Council* (9th Cir. 1994) 18 F.3d 802, 806; *Turning Point, Inc. v. City of Caldwell* (9th Cir. 1996) 74 F.3d 941; *Hovsons, Inc. v. Township of Brick* (3rd Cir. 1996) 89 F.3d 1096, 1104; *Smith & Lee Associates, Inc. v. City of Taylor, Michigan* (6th Cir. 1996) 102 F.3d 781, 795; *Erdman v. City of Fort Atkinson* (7th Cir. 1996) 84 F.3d 960; *Shapiro v. Cadman Towers, Inc.* (2d Cir. 1995) 51 F.3d 328, 334; see also Gov. Code, § 12955.6 [explicitly declaring that the FEHA's housing discrimination provisions shall be construed to afford people with disabilities, among others, no lesser rights or remedies than the FHA].)

Further, and perhaps even more importantly, it may well be that reliance on these alternative procedures, with their different governing criteria, serves at least in some circumstances to encourage community opposition to projects involving desperately needed housing for the disabled. As you are well aware, opposition to such housing is often grounded on stereotypical assumptions about people with disabilities and apparently equally unfounded concerns about the impact of such homes on surrounding property values.⁹ Moreover, once triggered, it is difficult to quell. Yet this is the very type of opposition that, for example, the typical conditional use permit procedure, with its general health, safety, and welfare standard, would seem rather predictably to invite, whereas a procedure conducted pursuant to the more focused criteria applicable to the reasonable accommodation determination would not.

For these reasons, I urge your jurisdiction to amend your zoning ordinances to include a procedure for handling requests for reasonable accommodation made pursuant to the fair housing laws. This task is not a burdensome one. Examples of reasonable accommodation ordinances are easily attainable from jurisdictions which have already taken this step¹⁰ and from various nonprofit groups which provide services to people with disabilities, among others.¹¹ It is, however, an important one. By taking this one, relatively simple step, you can help to ensure the inclusion in our communities of those among us who are disabled.

Sincerely,

BILL LOCKYER
Attorney General

⁹Numerous studies support the conclusion that such concerns about property values are misplaced. (See Lauber, *A Real LULU: Zoning for Group Homes and Halfway Houses Under The Fair Housing Amendments Act of 1988* (Winter 1996) 29 J. Marshall L. Rev. 369, 384-385 & fn. 50 (reporting that there are more than fifty such studies, all of which found no effect on property values, even for the homes immediately adjacent).) A compendium of these studies, many of which also document the lack of any foundation for other commonly expressed fears about housing for people with disabilities, is available. (See Council of Planning Librarians, *There Goes the Neighborhood . . . A Summary of Studies Addressing the Most Often Expressed Fears about the Effects Of Group Homes on Neighborhoods in which They Are Placed* (Bibliography No. 259) (Apr. 1990).)

¹⁰ Within California, these include the cities of Long Beach and San Jose.

¹¹ Mental Health Advocacy Services, Inc., of Los Angeles for example, maintains a collection of reasonable accommodations ordinances, copies of which are available upon request.

DEPARTMENT OF HOUSING AND COMMUNITY DEVELOPMENT**Division of Housing Policy Development**

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June 17, 2002

MEMORANDUM TO:

Planning Directors and Interested Parties

FROM:
Cathy E. Creswell, Deputy Director
Division of Housing Policy Development**SUBJECT:****Housing Element Legislation Effective January 1, 2002**

As you know, all localities are required to prepare and adopt a housing element as a part of their general plan. The housing element must include, among other things, identification and analysis of existing and projected housing needs, an identification of resources and constraints to address these needs and, goals, policies and scheduled programs for the maintenance improvement and development of housing for all economic segments of the community. For your information, Chapter 671, Statutes of 2001 (Senate Bill 520-Chesbro) effective on January 1, 2002, amended housing element law and Government Code Section 65008. As a result, State housing element law now requires localities to include the following in the preparation and adoption of a housing element:

1. As part of a governmental constraints analysis, an element must analyze potential and actual constraints upon the development, maintenance and improvement of housing for *persons with disabilities and demonstrate local efforts to remove governmental constraints that hinder the locality from meeting the need for housing for persons with disabilities* (Section 65583(a)(4)).
2. As part of the required constraints program, the element must include programs that *remove constraints or provide reasonable accommodations for housing designed for persons with disabilities* (Section 65583(c)(3)). ✓

All elements adopted after January 1, 2002 should comply with the requirements of Chapter 671. The Department is developing technical assistance materials to assist localities in the implementation of these new provisions.

The attached information is provided to inform localities and to assist in evaluating how these new provisions of law effect your communities. A copy of the legislation can be found on the Department's website at http://www.hcd.ca.gov/community-development/housing-element/housing-element-memos/docs/sb520_hpd.pdf. You may obtain copies of published bills from the 2001 session from the Legislative Bill Room at (916) 445-2323 or from the Senate's website at: www.senate.ca.gov. If you have any questions or would like additional information on housing element requirements, please contact Paul McDougall, of our staff, at (916) 322-7995.

Attachments

Chapter 671, Statutes of 2001

(Senate Bill 520)

Section 1 of Chapter 671 of 2001 statutes (SB 520) imparts the following:

It is the intent of the legislature in enacting this act only to clarify existing state requirements and not to establish any new reimbursable state mandate.

In addition, Chapter 671 amends two areas of planning and land use law within the Government Code: Chapter 1 - General Provisions (Section 65008) and Chapter 3 – Local Planning (Article 10.6, starting with Section 65580), specifically, as follows, excluding minor clean-up amendments.

Government Code Section 65008 Excerpts (additions or changes in italics/underlined and deletions indicated by asterisks)

65008. (a) Any action pursuant to this title by any city, county, city and county, or other local governmental agency in this state is null and void if it denies to any individual or group of individuals the enjoyment of residence, landownership, tenancy, or any other land use in this state because of any of the following reasons:

(1) The race, sex, color, religion, ethnicity, national origin, ancestry, lawful occupation, *familial status, disability*, or age of the *individual* or group of individuals. *For purposes of this section, both of the following definitions apply:*

(A) "Familial status" as defined in Section 12955.2.

(B) "Disability" as defined in Section 12955.3.

(2) The method of financing of any residential development of the individual or group of individuals.

(3) The intended occupancy of any residential development by persons or families of low, moderate, or middle income.

(b) No city, county, city and county, or other local governmental agency shall, in the enactment or administration of ordinances pursuant to this title, prohibit or discriminate against any residential development or emergency shelter because of the method of financing or the race, sex, color, religion, ethnicity, national origin, ancestry, lawful occupation, *familial status, disability*, or age of the owners or intended occupants of the residential development or emergency shelter.

(c) Omitted – Chapter 671 did not have major changes to this subsection

(d) (1) No city, county, city and county, or other local governmental agency may impose different requirements on a residential development or emergency shelter that is subsidized, financed, insured, or otherwise assisted by the federal or state government or by a local public entity, as defined in Section 50079 of the Health and Safety Code, than those imposed on nonassisted developments, except as provided in subdivision (e).

Chapter 671, Statutes of 2001 (Senate Bill 520)

(2) No city, county, city and county, or other local governmental agency may, because of the race, sex, color, religion, ethnicity, national origin, ancestry, lawful occupation, familial status, disability, or age of the intended occupants, or because the development is intended for occupancy by persons and families of low, moderate, or middle income, impose different requirements on these residential developments than those imposed on developments generally, except as provided in subdivision (e).

(e-g) – Omitted - Chapter 671 did not have major changes to these subsections

(h) The Legislature finds and declares that discriminatory practices that inhibit the development of housing for persons and families of low, moderate, and middle income, or emergency shelters for the homeless, are a matter of statewide concern.

Government Code Section 65583, Excerpts from Housing Element Law (additions or changes in italics/underlined and deletions indicated by asterisks)

65583. The housing element shall consist of an identification and analysis of existing and projected housing needs and a statement of goals, policies, quantified objectives, financial resources, and scheduled programs for the preservation, improvement, and development of housing. The housing element shall identify adequate sites for housing, including rental housing, factory-built housing, and mobilehomes, and shall make adequate provision for the existing and projected needs of all economic segments of the community. The element shall contain all of the following:

(a) An assessment of housing needs and an inventory of resources and constraints relevant to the meeting of these needs. The assessment and inventory shall include the following:

(1 - 3) Omitted – Chapter 671 did not have major changes to these subsections.

(4) An analysis of potential and actual governmental constraints upon the maintenance, improvement, or development of housing for all income levels and for persons with disabilities as identified in the analysis pursuant to paragraph (4) of subdivision (a), including land use controls, building codes and their enforcement, site improvements, fees and other exactions required of developers, and local processing and permit procedures. The analysis shall also demonstrate local efforts to remove governmental constraints that hinder the locality from meeting its share of the regional housing need in accordance with Section 65584 and from meeting the need for housing for persons with disabilities identified pursuant to paragraph (6).

(5) Omitted – Chapter 671 did not have major changes to this subsection.

(6) An analysis of any special housing needs, such as those of the *** “handicapped” omitted*** elderly, persons with disabilities, large families, farmworkers, families with female heads of households, and families and persons in need of emergency shelter.

Chapter 671, Statutes of 2001
(Senate Bill 520)

(7 - 8) Omitted – Chapter 671 did not have major changes to these subsections.

(b) Omitted – Chapter 671 did not have major changes to this subsection.

(c) Omitted – Chapter 671 did not have major changes to this subsection.

(1-2) Omitted – Chapter 671 did not have major changes to this subsection.

(3) Address and, where appropriate and legally possible, remove governmental constraints to the maintenance, improvement, and development of housing, including housing for all income levels and housing for persons with disabilities. The program shall remove constraints to, or provide reasonable accommodations for housing designed for, intended for occupancy by, or with supportive services for, persons with disabilities. ✓

(4) Omitted – Chapter 671 did not have major changes to this subsection.

(5) Promote housing opportunities for all persons regardless of race, religion, sex, marital status, ancestry, national origin, *** “or” omitted*** color, familial status, or disability.

(6) Omitted – Chapter 671 did not have major changes to this subsection.

(d-e) Omitted – Chapter 671 did not have major changes to these subsections.