

STAFF REPORT**Agenda Item # 2**

Project Title:	Notice of Fine Appeal Hearing
County File:	BIRF07-00739 & BIRF07-00740
Owners:	BI Properties Inc & Kevin Davidson
Zoning:	R-B
Site Address:	1970 Taylor Road, Bethel Island
Parcel Number(s):	028-140-004 & 028-140-003
Code Enforcement Officer:	Conrad Fromme
Staff Recommendation:	See section III.

Notice of Fine Appeal Hearing**I. PROJECT DESCRIPTION**

This is an appeal hearing for a Notice of Fine that was issued for Code Enforcement Cases BIRF07-00739 and BIRF07-00740. This case is for violation(s) of the operation of a Marina, a Trailer/Recreational Vehicle(RV) Park, boat storage and a U-haul rental business without a land use permit. There is also a violation of the accumulation of salvage vehicle parts and construction materials on the property, as well as boats in the marina that are being used for occupation/habitation.

II. BACKGROUND

These cases were originally started in 2007 based on a revocation of Land Use Permit 2013-91, due to failure to meet the Conditions of Approval. For two years the property owners worked with County staff to attempt to meet the Conditions of Approval, and filed for a new Land Use Permit LP09-2024 in 2009. The property owners worked with County staff for years on the Land Use Permit and Conditions of Approval while the operations and conditions at the property continued. In 2018 it was determined by County staff that the violations at the property had continued without an approved Land Use Permit, and that the operations/violations needed to discontinue until a Land Use Permit was officially approved for the site and the Conditions of Approval had been met.

On November 14, 2018, department staff observed the operation of a marina, Trailer/RV Park, boat storage and a U-Haul rental business at the properties. Accumulation of tires, batteries, car parts, construction equipment, trash and debris were also identified at the site. In the marina it was identified that several boats were being used for occupation/habitation.

On November 16, 2018 a Notice to Comply was issued mailed to the property owners. The case continued, and after department staff verified the violations remained at the property, a Notice of Intent to Record a Pending Nuisance Abatement Proceeding was posted at the property and a certified mailed copy was sent to the property owner on December 3, 2018.

The case continued, and after department staff verified the violations remained at the property, a recorded Notice of Pending Nuisance Abatement Proceeding was posted at the property and a certified mailed copy was sent to the property owner on February 27, 2019.

The case continued, and after department staff verified the violations remained at the property, an Administrative Penalty Notice of Violation was posted at the property and a certified mailed copy was sent to the property owner on April 25, 2019.

The case continued, and after department staff verified the violations remained at the property, an Administrative Penalty Notice of Fine was posted at the property and a certified mailed copy was sent to the property owner on July 3, 2019.

On July 17, 2019 an appeal of the Notice of Fine was filed on behalf of the property owners by the property owner's attorney. On July 19, 2019 a request was made to schedule an appeal hearing for the Notice of Fine. The appeal hearing was scheduled and a Notice of Appeal hearing was posted at the property and a certified mail copy was sent to the property owners on July 24, 2019.

III. RECOMMENDATIONS

Staff recommends that the County Zoning Administrator:

- 1) Direct the property owner to discontinue the operations, remove the violation within the next thirty (30) days, and resubmit for a new Land Use Permit.

OR

- 2) Direct the property owner to pay the fine amount of \$14,300.00 as listed in the Notice of Fine

Conrad Fromme

From: Dave Larsen <Dave@dlarsenlaw.com>
Sent: Wednesday, July 17, 2019 8:09 PM
To: Conrad Fromme
Subject: Anchor Marian Appeal
Attachments: Appeal Cover Letter Notes (Sign'd).pdf; Letter to County re Abatement Action.pdf; Letter Exhibit.docx

Conrad - -

Attached is our appeal to four notices of penalty assessments we received recently. Our appeal consists of a cover letter, copy of my previous letter dated March 1, 2019 and the letter exhibit 9Exhibit "A"). Let me know if you need anything else from this end in order to schedule the appeal.

Regards,

Dave Larsen
Cell: (925) 413 - 3258

Law Offices of David J. Larsen
dave@dlarsenlaw.com

Venture Commerce Center
5179 Lone Tree Way
Antioch, CA 94531

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Law Offices of
David J. Larsen

Email: dave@dlarsenlaw.com
Website: www.dlarsenlaw.com

July 17, 2019

SENT VIA EMAIL & U.S. MAIL

Mr. Conrad Fromme
Department of Conservation & Development
Building Inspection Division
30 Muir Road, Martinez, CA 94553

**Re: Four Administrative Penalty Notices of Fine
1970 Taylor Road, Bethel Island, CA
APN 028-140-004**

Dear Conrad:

As you know, I represent the owners of Anchor Marina. This cover letter together with the attached copy of my March 1, 2019 letter and its letter exhibit, constitute our appeal of the four Administrative Penalty Notices of Fine dated July 3, 2019.

AS YOU PREVIOUSLY AGREED, PLEASE SEND ME COPIES OF ALL CORRESPONDENCE CONCERNING THIS ENFORCEMENT MATTER SO I DO NOT FIND MYSELF IN A SITUATION WHERE I HAVE AN EXTREMELY SHORT AMOUNT OF TIME TO MEET A COUNTY DEADLINE. Here, the deadline to file our appeal is tomorrow, and I will be filing this appeal by email, unless you tell me otherwise.

In addition to the points raised in my March 1, 2019 letter, we are adding the following bases for appeal:

- **Equal Protection Violation:** Your confirmation (see email attached as Exhibit "A") that Joe Losado will not allow those uses requiring a use permit to continue in operation, pending the processing of a use permit, unless we pay thousands of dollars of allegedly past due county fees, which if legitimate should have been liened against the property years ago; and that even if those fees are paid, Joe may or may not allow such uses to continue to operate in the meantime, is a violation of my clients' constitutional rights to equal protection (because in other county cases including one I am now handling, the county allows such uses to continue pending completion of the use permit process). This is not only illegal, but entitles us to reimbursement of our attorney fees should litigation ensue. As a personal note, legal concerns aside, I have never seen a more sadistic, mean-spirited

approach to code enforcement, in my thirty plus years as a city attorney. The county should want to work with my clients, given their genuine willingness to bring this property into compliance, as fully discussed in the attached March 1, 2019 letter. My guys are not the Koch Brothers. They need income to address the county's concerns. Allowing the continuation of such uses pending completion of the permit process is not only something the county typically does, but it allows an income stream to pay for the changes needed to bring a non-conforming property into compliance.

- **Due Process Violation:** In addition to the notice issues identified in the attached March 1, 2019 letter, the four Administrative Penalty Notice of Fines dated July 3, 2019, violate my clients' due process rights, and form the basis for reimbursement of attorney fees if litigated, because; (i) they do not explain how the \$14,300 fine amount is calculated; and (ii) they do not explain whether this is the entire amount the county is requesting for all four violations, or whether it is requesting \$14,300 for each violation.

In summary, my clients purchased the property with the reasonable belief that it could continue to be operated in the manner it had been in the past, as fully explained in the attached March 1, 2019, letter. They have had continuing interaction over the years with county staff, and believed these land use issues had been resolved, only to find out that new staff members disagreed with past commitments made by their successors. In response to the county's previous Notice of Violation, we sent a comprehensive response fully supported by citation and reference (i.e. the March 1, 2019 letter), but to my amazement, we have never received a response to that letter. In fact, based on some of the comments made by staff, it is likely that few if any staff members have even looked at that letter.

Based on my thirty plus years practicing municipal law, I firmly believe that the legal issues in this appeal are well-founded. We will prevail if this ends up in court and for that reason, I strongly urge you to forward this to county counsel's office for immediate review. Having said all of that, we remain willing to work with the county to bring this property into compliance, so long as we are treated in the same manner as any other property owner, including being allowed to continue operating land uses requiring a use permit, pending completion of the use permit process.

Please advise concerning next steps so that we will have adequate time to prepare our appeal presentation.

Regards,



Dave Larsen

EXHIBIT "A"

Dave Larsen

From: Conrad Fromme <Conrad.Fromme@dcd.cccounty.us>
Sent: Thursday, April 4, 2019 2:06 PM
To: Dave Larsen
Cc: al kalin; Kevin Davidson
Subject: RE: 1970 Taylor Road; Anchor Marina

Dave,

I brought our discussion from April 1st to the planner Francisco, and to my supervisor Joe Losado. Francisco told me that the balance of fees that are owed is \$7,270.76. That does not include a fee of approximately \$4,000 for a new Land Use Permit (LUP) application. The restriction of having to bring certain things into compliance before the LUP can be processed again actually came from Joe, and after talking with Joe, he is holding to that, even if the fees are paid. He did say if the balance of fees were paid we could discuss maybe meeting in the middle on the items to be brought into compliance.

As we discussed, the items that need to be brought into compliance prior to submittal of a new LUP

- Discontinue the operation of the Uhaul business and remove the vehicles and equipment
- Discontinue the outdoor boat storage
- Discontinue the allowance of "liveaboard" boats in the marina
- Discontinue the sale of alcohol at the store
- Discontinue the renting of the RV/camper spaces and remove the RVs/campers/travel trailers from the spaces

As discussed previously, I would like to work with you on a schedule to meet these conditions, but if that is not an option, I have been instructed to resume enforcement. Enforcement would continue with the issuance of a Notice of Violation, which gives you 30 days to comply. If compliance is not met in 30 days, then I would issue a Notice of Fine, which at that point you would have the opportunity to appeal before the County zoning administrator and the County Building Official.

I do believe that if the balance of fees were paid, I would be able to work with you better towards getting the LUP back in process without having to discontinue all of the items listed above. After reviewing the file it looks like an official letter was issued August 15, 2005, revoking the LUP. According to that same LUP it showed 5 RV parking spaces. Do you have an original LUP number for the property to reference before this LUP from 1991 which is LP 2013-91, which is the one that was revoked? The original LUP would show us what should be allowed today.

Also, the notification address we have on file is P.O. Box 6508, Concord, CA 94524. Is this correct?

Conrad Fromme
Senior Building Inspector/Code Enforcement Officer
Contra Costa County
Department of Conservation & Development
(925) 427-8843

From: Dave Larsen <Dave@dlarsenlaw.com>
Sent: Thursday, March 28, 2019 2:54 PM
To: Conrad Fromme <Conrad.Fromme@dcd.cccounty.us>
Cc: al kalin <alankalin@yahoo.com>; Kevin Davidson <kedavidson01@comcast.net>
Subject: Meeting Onsite

Conrad --

April 1 at 2:00 works for me and my clients for an onsite meeting out at the marina. Please confirm that that still works for you. Thanks so much.

Regards,

Dave Larsen

Law Offices of David J. Larsen

dave@dlarsenlaw.com

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**Department of
Conservation and
Development**

30 Muir Road
Martinez, CA 94553

Phone: 1-855-323-2626

**Contra
Costa
County**



John Kopchik
Director

Aruna Bhat
Deputy Director

Jason Crapo
Deputy Director

Maureen Toms
Deputy Director

Kelli Zenn
Business Operations Manager

ADMINISTRATIVE PENALTY NOTICE OF FINE
(Contra Costa County Ordinance Code, § 14-12.006)

July 3, 2019

BI PROPERTIES INC
PO BOX 403
BETHEL ISLAND CA, 94511-0403

SITE: 1970 TAYLOR RD, BETHEL ISLAND, CA
APN: 028140003
REF: BIRF07-00740

Our records indicate that you are the responsible party of record of the above-referenced property. An inspection of the property was conducted on November 14, 2018, and the following violation(s) noted:

1. Operation of an unpermitted Marina, a Trailer/RV Park, Boat storage and a U-Haul Rental Business in an R-B zoning district. Accordingly this is violation of Contra Costa County Ordinance 82 & 84. Adoption of the Zoning Ordinance; 82-2.002. Land Use Enforcement; 82-2.006. Uses permitted in a R-B Zoning District; 84-52.402 & 84-52.404
2. Accumulation of tires, batteries, car parts, construction equipment, trash and debris. Accordingly this is violation of Contra Costa County Ordinance 82, 84 & 88. Adoption of Zoning Ordinance; 82-2.002. Land Use Enforcement; 82-2.006. Uses permitted in a R-B zoning district; 84-52.402 Junkyard Conditions Defined; 88-4.206.
3. Occupation of boats in the illegal marina this is a violation of the Contra Costa County General Plan 2005 – 2020 (Section 3-27 (H) Water) which does not allow for this anywhere within the County's 68 square miles of waterways including any of the inland bodies of water such as reservoirs, for floating homes, live aboard boats or any other type of boat apartments.

In the Notice of Violation dated April 25, 2019, you were advised of the options available to correct the violation on your property and the consequences of non-compliance.

Because the violation(s) have not been corrected, the Director has imposed on you a fine in the amount of \$14,300.00.

Payment shall be sent to Contra Costa County, Department of Conservation and Development, Community Development Division, 30 Muir Road, Martinez, CA 94553 **within thirty (30) days of the date of this notification**. The administrative penalty is a personal obligation, and failure to pay the penalty may result in the amount being made a lien and/or special assessment against your property, and other legal action may be taken to collect the penalty. If a judicial action is required to collect the penalty, the County will seek to recover its attorney fees and cost from you.

RIGHT TO APPEAL

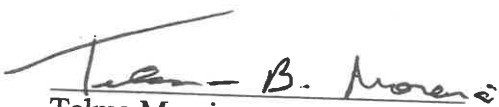
You may appeal this fine by filing a written appeal with the Contra Costa County, Department of Conservation and Development, Community Development Division at 30 Muir Road, Martinez, CA 94553, within 15 calendar days of the date of mailing of this notice. The written appeal must contain:

1. A brief statement setting forth the interest you have in the matter relating to the imposition of the penalty;
2. A brief statement of the material facts you claim support the contention that no fine should be imposed or that a fine of a different amount is warranted; and
3. An address at which you agree that notice of any additional proceedings or an order relating to imposition of the fine may be received by first class mail.

If you file an appeal, the appeal hearing will be set no sooner than 20 days and no later than 45 days following the service date of the notice of appeal hearing. Notice of the appeal hearing will be mailed at least 12 calendar days before the date set for the hearing. Failure to appear will cause this notice to become a final order. If you fail to request an appeal, this notice shall be final. Government Code section 53069.4 authorizes judicial review of a final administrative order.

The Director may record a copy of this Notice of Fine with the Contra Costa County Recorder.

Department of Conservation and Development
Contra Costa County


Telma Moreira
Principal Planner
Community Development Division